IN THE UNITED STATE DISTRICT COURTEIVED FOR THE MIDDLE DISTRICT OF ALABAMA 7007 JUL 10 A 10: 24 **EASTERN DIVISION**

DEBRA P. HACKETT. CLK U.S. DISTRICT COURT MIDDLE DISTRICT ALA

PROGRESSIVE PREFERRED **INSURANCE COMPANY Plaintiff**

VS.

CASE NO. 3:06-CV-00934-WKW

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN **Defendants**

> GOLDEN'S EVIDENTIARY SUBMISSION IN OPPOSITION TO PROGRESSIVE'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT

Of Counsel:

G. Houston Howard II HOWARD, DUNN, HOWARD & HOWARD P. O. Box 1148 Wetumpka, AL 36092 334-567-4356

INDEX TO EXHIBITS

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- A. Golden's Original Complaint (as filed by Progressive)
- B. Progressive Policy (as filed by Progressive)
- C. Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate
- D. Subpoena to University Agency
- E. University Agency File
- F. Second Request for Production to Progressive
- G. Progressive's Response to Second Request for Production
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- P. Third Requests for Admissions to Progressive
- Q. Progressive's Response to Third Requests for Admission
- R. Excerpts for 2005 Regulations of Alabama Manufactured Housing Commission
- S. Notification of Service of Complaint on John Mark Parker
- T. Letter dated April 13, 2006 from G. Houston Howard II to Progressive.
- U. Letter dated April 27, 2006, from Progressive to JMP Enterprises, Inc.
- V. Motion to Amend filed by J. M. Parker on May 1, 2006.

- W. Motion to Stay filed by J. M. Parker on May 1, 2006.
- X. Plaintiff's First Amended Complaint in State Court.
- Y. Answer of Parker and JMP Enterprises to Golden's First Amended Complaint.

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- Z. Golden's Letter of January 11, 2006, to Parker and return receipt card signed by Jill Parker.
 - AA. Excerpts from Deposition of John Mark Parker.
 - BB. Excerpts from Deposition of Randall Bracknell.
 - CC. Excerpts from Deposition of Jennifer Golden
 - DD. Scheduling Order in state-court where Parker appeared
 - EE. Parker's 2004 Installation License
 - FF. Settlement Statement dated April 27, 2005.
 - GG. State Set up Inspection Report.
 - HH. Purchase Agreement dated January 28, 2005.
 - II. Golden's Second Interrogatories to Progressive.
 - JJ. Progressive's Answers to Second Interrogatories
 - KK. Affidavit of Gordon L. Davis
 - LL. B. Allen, Alabama Liability Insurance Handbook (1996).
- MM. Decision in Star Insurance Co. v. A-1 Metals, Inc., Case No. 2:05-CV-197-WKW (M.D. Ala. July 12, 2006).
 - NN. Request for Admissions Establishing Date Parker Paid for 2005 License.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

counsel of record, by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the 10 day of July, 2007.

Of Counsel

EXHIBIT A:

GOLDEN'S ORIGINAL COMPLAINT

Case 3:06-cv-00934-WKW-TFM

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Filed 06/15/2007

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IN THE CIRCUIT COURT OF LEE COUNT

JENNIFER M. GOLDEN, PLAINTIFF,

v.

IN OFFICE CORINNE T. HURST CIRCUIT CLERK

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CASE NO. 2006-100

DEER VALLEY HOMEBUILDERS, INC., a CORPORATION; TIMBERLINE HOMES, INC., a corporation; JOHN MARK PARKER, an individual.

DEFENDANTS

COMPLAINT

- 1. The plaintiff is an individual residing at 2999 Lee Road 17, Opelika, AL.
- Timberline Homes, Inc., is a corporation engaged in the business of selling manufactured homes. Its registered agent for service of process is Michael K. Morris, 1251 South Boulevard, Brewton, AL 36426
- 3. John Mark Parker is an individual engaged in the business of installing manufactured homes. His address is P. O. Box 3501, La Grange, Ga. 30241.
- Deer Valley Homebuilders, Inc., is a corporation engaged in the business of constructing manufactured homes. Its address for service of process is P.O. 310 Guin, Alabama 35563.

CLAIMS AGAINST DEER VALLEY COUNT I: BREACH OF EXPRESS WARRANTY

- 5. On or about April 27, 2005, the plaintiff purchased a home manufactured by Deer Valley.
 - 6. Deer Valley had manufactured the home specifically for the plaintiff.
 - 7. The plaintiff purchased the home for her personal, family, or household use.

EXHIBIT

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- 8. Deer Valley expressly warranted to the plaintiff by written warranty that the home was free from manufacturing defects in material or workmanship and that it would repair any such defects.
 - 9. The home contained substantial manufacturing defects.
- 10. The plaintiff gave Deer Valley notice of this breach of warranty as provided in the warranty or Deer Valley has waived any failure to give notice as provided in the warranty.
- 11. Deer Valley attempted to make repairs on some items, but has failed to repair the home properly and has failed to complete repairs. As a result, Deer Valley has breached the warranty, and the warranty has failed of its essential purpose.
- 12. As a proximate consequence of this defendant's breach of warranty, the plaintiff has suffered annoyance, inconvenience, and mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if the defendant had performed according to its warranty.

COUNT II: BREACH OF IMPLIED WARRANTY

- 13. On or about April 27, 2005, the plaintiff purchased a manufactured home constructed by Deer Valley.
 - 14. Deer Valley manufactured the home specifically for the plaintiff.
 - 15. The plaintiff purchased the home for her personal, family, or household use.
- 16. Pursuant to section 7-2-314 of the Alabama Code and section 2308(a) of title fifteen of the United States Code, the defendant impliedly warranted to the plaintiff that the home was merchantable, that it was habitable, that it was free from defects, and that it would meet the ordinary expectations of a consumer concerning a new product.

- 17. The home contained substantial defects upon delivery to the plaintiff.
- 18. The plaintiff gave Deer Valley notice of this breach of warranty, and Deer Valley failed or refused to repair some defects and failed to repair properly other defects.
- 19. As a proximate consequence of Deer Valley's breach of warranty, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if Deer Valley had performed according to its warranty.

COUNT III: VIOLATION OF MAGNUSON MOSS ACT

- 20. The plaintiff incorporates herein the allegations of counts one and two.
- This defendant's conduct described therein is a violation of the Magnuson Moss Warranty Act.

COUNT IV: NEGLIGENT REPAIR

- 22. Deer Valley undertook to repair certain defects in the plaintiff's home.
- 23. Deer Valley negligently performed this undertaking.
- 24. As a proximate consequence of Deer Valley's negligence, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly repaired.

COUNT V: WANTON REPAIR

- 25. Deer Valley undertook to repair certain defects in the plaintiff's home.
- 26. Deer Valley wantonly performed its undertaking.
- 27. Deer Valley consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.

28. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.

29. As a proximate consequence of Deer Valley's wantonness, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly repaired.

WHEREFORE, the plaintiff demands judgment against Deer Valley Homebuilders, Inc. for such compensatory and punitive damages, in excess of \$10,000, as a jury may award.

CLAIMS AGAINST TIMBERLINE COUNT VI: BREACH OF IMPLIED WARRANTY

- 30. On or about April 27, 2005, the plaintiff purchased from Timberline a home constructed by Deer Valley.
 - 31. The plaintiff purchased the home for their personal, family, or household use.
- 32. Pursuant to section 7-2-314 of the Alabama Code, Timberline impliedly warranted to the plaintiff that the home was merchantable, that it was habitable, that it was free from substantial defects, and that it would meet the ordinary expectations of a consumer concerning a new product.
 - 33. The home contained substantial defects.

Document 22

- 34. The plaintiff gave Timberline notice of this breach of warranty, and it failed or refused to repair the defects.
- 35. As a proximate consequence of Timberline's breach of warranty, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if the defendant had performed according to its warranty.

COUNT VII: BREACH OF IMPLIED WARRANTY

- 36. Prior to April 27, 2005, the plaintiff contracted to purchase from Timberline a home constructed by Deer Valley.
- 37. The plaintiff contracted to purchase the home for her personal, family, or household use.
 - 38. As part of the purchase, Timberline agreed to deliver and set up the home.
- 39. Timberline impliedly warranted to the plaintiff that home would not be damaged in delivery and that the home would be properly set and installed.
- 40. The defendant breached such implied warranties in that it, or persons acting on its behalf, damaged the home in delivery, installation, and set up and failed to install properly the home.
- 41. The plaintiffs gave Timberline notice of this breach of warranty, and it failed or refused to repair the defects.
- 42. As a proximate consequence of this defendants' breach of warranty, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if the defendant had performed according to its warranty.

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COUNT VIII: VIOLATION OF MAGNUSON MOSS ACT

- 43. The plaintiff incorporates herein the allegations of the last two counts.
- 44. The conduct of Timberline described therein constitutes a violation of the Magnuson Moss Act.

COUNT IX: NEGLIGENT DELIVERY AND SET UP

- 45. Timberline undertook to deliver and install the plaintiff's home.
- 46. Timberline negligently performed this undertaking.
- 47. As a proximate consequence of the negligence of Timberline, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly delivered and installed.

COUNT X: WANTON DELIVERY AND SET UP

- 48. Timberline undertook to deliver and install the plaintiff's home.
- 49. Timberline wantonly performed this undertaking.
- 50. The defendant consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiffs.
- 51. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.

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52. As a proximate consequence of the wantonness of Timberline, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly delivered and installed.

COUNT XI: FRAUD BY FAILURE TO DISCLOSE

- 53. The plaintiff incorporates herein the allegations of counts six, seven, nine and ten.
- 54. Timberline innocently, negligently, wantonly, or intentionally withheld, concealed, and failed to disclose to the plaintiffs certain material facts that it was under a duty to communicate to the plaintiffs based upon a confidential relationship between the parties or the particular facts of the case; namely, that Parker was not licensed, as required by law, to install manufactured homes.
- 55. In reasonable reliance on the defendants, the plaintiff purchased a home from Timberline and made no objection to Parker's installing it.
- 56. The defendant consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.
- 57. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.

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58. As a proximate consequence of Timberline's failure to disclose, the plaintiff has suffered annoyance, inconvenience, and mental anguish, and the value of the home is less than it otherwise would have been.

WHEREFORE, the plaintiff demand judgment against Timberline Homes, Inc., for such compensatory and punitive damages, in excess of \$10,000, as a jury may award.

CLAIMS AGAINST GERALD MARK PARKER COUNT XII: NEGLIGENT DELIVERY AND INSTALLATION

- 59. Parker, acting by and through his agents, servants, and employees, undertook to deliver and install the plaintiff's home.
 - 60. Parker negligently performed this undertaking.
- 61. As a proximate consequence of Parker's negligence, the home was damaged; the plaintiff has suffered annoyance, inconvenience, and mental anguish; and the value of the home is now less than it otherwise would have been.

COUNT XIII: WANTON DELIVERY AND INSTALLATION

- 62. Parker, acting by and through his agents, servants, and employees, undertook to deliver and install the plaintiff' home.
 - 63. This defendant wantonly performed this undertaking.
- 64. This wantonness included, among other things, this defendant's failure to protect the home from rain during installation.
- 65. This defendant consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.
- 66. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant or employee, the plaintiff allege that the principal knew or should have known of the unfitness of the agent, servant, or

employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.

67. As a proximate consequence of Parker's wantonness, the home was damaged; the plaintiff has suffered annoyance, inconvenience, and mental anguish; and the value of the home is less than it otherwise would have been.

COUNT XIV: BREACH OF IMPLIED WARRANTY

- 68. Parker, acting by and through his agents, servants, and employees, undertook to deliver and install the plaintiff's home.
- 69. Parker impliedly warranted to the plaintiff that the home would not be damaged during delivery and installation and would be properly set and installed.
- 70. Parker, acting by and through his agents, servants, and employees damaged the home in delivery and installation.
 - 71. The plaintiff gave Parker notice of the damage, and he has failed to correct it.
- 72. As a proximate consequence of Parker' breach of warranty, the home was damaged; the plaintiff has suffered annoyance, inconvenience, and mental anguish; and the value of the home is less than it otherwise would have been.

COUNT XV: FRAUD BY FAILURE TO DISCLOSE

- 73. The plaintiff incorporates herein the allegations of last three counts.
- 74. Parker innocently, negligently, wantonly, or intentionally withheld, concealed, and failed to disclose to the plaintiff certain material facts that he was under a duty to communicate to the plaintiff based upon a confidential relationship between the parties

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or the particular facts of the case; namely, that he was not licensed, as required by law, to install manufactured homes.

- 75. In reasonable reliance on the defendants, the plaintiff purchased a home from Timberline and made no objection to Parker's installing it.
- 76. The defendant consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.
- 77. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.
- 78. As a proximate consequence of Parker's failure to disclose, the plaintiff has suffered annoyance, inconvenience, and mental anguish, and the value of the home is less than it otherwise would have been.

WHEREFORE, the plaintiff demands judgment against Gerald Mark Parker for such compensatory and punitive damages, in excess of \$10,000, as a jury may award.

HOWARD, DUNN, HOWARD & HOWARD,

Attorneys for Plaintiff

G. Houston Howard II (HOW15)

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OF COUNSEL: G. HOUSTON HOWARD II HOWARD, DUNN, HOWARD & HOWARD P. O. BOX 1148 WETUMPKA, AL 36092 (334) 567-4356

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES.

G. Houston Howard II

PLAINTIFF REQUESTS SERVICE ON ALL DEFENDANTS BY CERTIFIED MAIL.

G. Houston Howard II

EXHIBIT B:

PROGRESSIVE POLICY AS FILED BY PROGRESSIVE

*PROGRESSIVE**

UNIVERSITY AGCY INC PO BOX 3067 AUBURN, AL 36831

Named Insured:

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241

Policy number: 08263817-0

Progressive Preferred Insurance Company January 5, 2005 Policy Period: Aug 1, 2004 - Aug 1, 2005 Page 1 of 2

personal.progressive.com

Make payments, check billing activity or check status of a claim.

334-887-6569

UNIVERSITY AGCY INC

Contact your agent during business hours.

800-444-4487

For policy service and claims service, 24 hours a day, 7 days a week.

Commercial Auto Insurance Coverage Summary

This is your Declarations Page Your coverage has changed

Your coverage began the later of August 1, 2004 at 12:01 a.m. or at the time your application is executed on the first day of the policy period. This policy period ends on August 1, 2005 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for an auto may not be combined with the limits for the same coverage on another auto, unless the policy contract allows the stacking of limits. The policy contract is form 1050 (11-94). The contract is modified by forms 1602 (08/83), 1857 (03/96), 6931 (04/89), 2012 (03/96), 8282 (04/84), 8470 (12/86), 4792A (01/03), 1197 (08/93), MC1632 (06/71), 9809 (04/96) and 8627 (03/88).

The named insured organization type is a corporation.

Policy changes effective January 4, 2005

Premium change:	\$0.00
Changes:	The lienholder information on this policy has changed.

The changes shown above will not be effective prior to the time the changes were requested.

Outline of coverage

Description	Limits	Deductible	Premium
Liability To Others	***************************************		\$8,363
Bodily Injury and Property Damage Liability	\$1,000,000 combined single limit		
Uninsured/Underinsured Motorist	\$25,000 each person/\$50,000 each accident		84
Uninsured Motorist Property Damage	\$25,000 each accident	\$250	44
Medical Payments	\$2,000 each accident	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	60
Comprehensive	***************************************		461
See Schedule Of Covered Autos	Limit of liability less deductible	•	
Collision		*******************	2,168
See Schedule Of Covered Autos	Limit of liability less deductible		
Subtotal policy premium			\$11,180
Fees			150
Total 12 month policy premium	***************************************	*********************	\$11 330

Rated drivers

1. JOHN PARKER

2. JILL PARKER

Form 6489 (05/02)

EXHIBIT

CERTIFIED COPY THIS WILL CEATIFY THAT THE ATTACHED IS A TIME AND COMPLETE COPY OF THE ORGANA

CUSTODIAN OF RECOALS

Policy number: 08263817-0 JMP ENTERPRISES, INC Page 2 of 2

Auto coverage schedule

1.	1992 Intl VIN: 1HSF	810 HBAZN7NH4438	314		Stated Amount: Garaging Zip Code:	\$25,000 30240	Radius:	100
Liability	Liability	UM/UIM BI	UM PD	Med Pay				
Premium	\$4,836	\$42	\$22	\$25		•••••••	***************************************	
Physical Damage	Comp Deductible	Comp Premium	Collision Deductible	Collision Premium				Auto Totai
Premium	\$1,000	\$242	\$1,000	\$1,092		•••••••		\$6,259
2. Liability Premium	NON Own VIN: NON Liability \$1,107	ned Attached	d Teir *		Garaging Zip Code:	30240	Radius;	100 Auto Total \$1,107
3. 2000 Ford F650 Super Duty VIN: 3FDNW6540YMA03102			Stated Amount: Garaging Zip Code:	\$28,000 30240	Radius:	100		
Liability	Liability	UM/UIM BI	UM PD	Med Pay				
Premium	\$2,420	\$42	\$22	\$35				,
Physical Damage	Comp Deductible	Comp Premium	Collision Deductible	Collision Premium				Auto Total
Premium	\$1,000	\$219	\$1,000	\$1,076	.,			\$3,814

^{*} Non-Owned trailer but only while attached to a listed power unit specifically described on the declarations page

Lienholder information

We will send certain notices such as coverage summaries and cancellation notices to the following:

1.	Lienholder	Auto 1	CHARTER BANK
			PO BOX 570 WEST POINT, GA 31833
			1992 Intl 810 (1HSHBAZN7NH443814)
2.	Lienholder	Auto 3	CHARTER BANK
			PO BOX 570 WESTPOINT, GA 31833
			2000 Ford F650 Super Duty (3FDNW6540YMA03102)





COMMERCIAL AUTO POLICY

Form No. 1050 (11-94)
© 1995 The Progressive Corporation. All Rights Reserved.

WE'RE HERE FOR YOU!

Our Immediate Response®

claims service

and 24 Hour Policy Service

are available 24 hours a day,

7 days a week.

To report a claim, call:

1-800-274-4499

For policy service, call:

1-800-444-4487

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POLICY AGREEMENT

If you pay your premium when due, we agree to insure you, based upon the warranties and representations made by you in your application, subject to all of the terms of this Policy including all applicable endorsements attached to this Policy and shown in the Declarations. The Declarations and your application are a part of this Policy.

YOUR DUTIES IN CASE OF AN ACCIDENT OR LOSS

Notice of Accident or Loss

In the event of an accident or loss, report it to us as soon as practicable by calling our toil-free claims reporting number 1-800-274-4499. The report should give the time, place and circumstances of the accident or loss, including the names and addresses of any injured persons and witnesses, and the license plates of the vehicles involved.

You should also notify the police within twenty-four (24) hours or as soon as practicable if:

- a. a hit-and-run auto is involved; or
- b. theft or vandalism has occurred.

All accidents or losses should be reported even if an insured person is not at fault.

Other Duties

Any person claiming coverage under this Policy must:

- cooperate with and assist us in any matter concerning a claim or lawsuit;
- provide any sworn or written proof of loss that we require before payment of a loss:
- provide us with signed or recorded statements under oath as often as we may reasonably require;

- 4. promptly send us any and all legal papers received relating to any claim or lawsuit:
- 5. attend hearings and trials as we require;
- 6. submit to medical examination at our expense by doctors we select as often as we may reasonably require;
- 7. authorize us to obtain medical and other records which we deem appropriate;
- 8. authorize us access to your business or personal records as often as we deem necessary;
- 9. provide us with written notice of any legal action which such person has undertaken in regard to the accident for which coverage is sought;
- 10. assume no obligation, make no payment or incur no expense without our consent, except at your own cost;
- 11. convey title to and possession of the damaged, destroyed, or stolen property to us if our payment is based on a total loss or constructive total loss of the property; a constructive total loss occurs when the cost of repairs exceeds the lesser of the actual cash value of the damaged property immediately before the loss, or the limit of liability of the damaged property as indicated in the Policy.

In addition to the above, a person claiming coverage under PART III - DAMAGE TO YOUR **AUTO must:**

1. take reasonable steps after a loss to protect the insured auto and its equipment from further loss, provided that we shall pay reasonable expenses incurred in providing that protection, provided further that if you fail to do so, any further damages will not be covered under this Policy.

- 2. keep a record of your expenses for consideration in the settlement of a claim.
- 3. report the theft or vandalism of the insured auto to the police within twentyfour (24) hours of the accident;
- 4. allow us to inspect and appraise the insured auto before repair or disposal.

GENERAL DEFINITIONS

The following words and phrases have special meaning when used in bold throughout this Policy and in the endorsements unless specifically modified.

- 1. "We", "us" and "our" mean the Company providing this insurance as shown in the Declarations.
- 2. "You" and "your" mean:
 - if the policy is issued in the name of an individual, the person shown in the Declarations as the named insured: or
 - b. the organization shown in the Declarations as the named insured.
- 3. "Bodily injury" means physical injury to or sickness, disease or death of any person. Bodily injury does not include harm, sickness, disease or death arising out of a medically defined communicable disease contracted by any person, nor the exposure of such a disease by any person to any other person.
- 4. "Property damage" means damage to or destruction of tangible property, including loss of its use.
- 5. "Auto" means a land motor vehicle or trailer designed for travel on public roads. It does not include mobile equipment.

- "Trailer" includes a semi-trailer and any piece of equipment used to convert a semi-trailer to a full trailer while it is attached to the semi-trailer.
- 7. "Mobile equipment" means any of the following types of equipment, including but not limited to any attached machin-
 - Equipment such as: Bulldozers, power shovels, cranes, rollers, booms, winches, graders, diggers, mixers, compressors, generators, drills, weiders, pumps, farm implements and machinery, forklifts, shredders or other similar specialized equipment.
 - b. Vehicles you use solely on premises you own or rent and on accesses to public roads from these premises, unless listed in the declarations of this policy and not defined as mobile equipment under other parts of this definition.
 - c. Any vehicle designed for customary use off public roads or those which do not require licensing in the state in which you live or your business is licensed.
 - d. Vehicles, whether self-propelled or not, used primarily to provide mobility to permanently attached equipment including, but not limited to: Air compressors, pumps, generators, spraying, welding, cleaning, lighting, geophysical exploration and well servicing equipment, cherry pickers or other devices used to raise or lower workers, snow removal equipment, or road maintenance equipment.
 - e. Vehicles used primarily for purposes other than transportation of persons

- or cargo. However, self-propelled vehicles with permanently attached equipment listed below are not mobile equipment but will be considered autos:
- 1) Snow removal, road maintenance and street cleaning equipment.
- 8. "Accident" means a sudden, unexpected and unintended event, or a continuous or repeated exposure to that event, that causes bodily injury or property damage and arises out of the ownership, maintenance or use of your insured
- 9. "Your insured auto" or "insured auto" means:
 - a. Any auto described in the Declarations or any replacement auto. The same coverages and limits will apply to the replacement auto as applied to the auto being replaced, until you notify us. You must, however, notify us within 30 days of replacement for coverage to continue to apply. Once ownership in the original auto is transferred or it becomes permanently inoperable, this policy no longer applies to it.
 - b. Any additional auto of which you acquire ownership during the policy period provided that: 1) if the auto is used in your business, we must insure all other autos you own and that have been used in your business, and 2) if the auto is not used in your business, we must insure all other autos you own. The same coverages and limits will apply to the additionally acquired auto as apply to your other autos on the policy, except that:

- 1) For coverage to apply to the additional auto under PART 1 -LIABILITY TO OTHERS and PART II - EXPENSES FOR MEDICAL SERVICES TO IN-SUREDS, you must notify us within 30 days of its acquisition. If you have not notified us of an additional auto and an accident occurs within 30 days of your acquisition, only those coverages and limits for Parts I and II shown in your most current declarations will apply.
- 2) For coverage to apply to the additional auto under PART III -DAMAGE TO YOUR AUTO, you must have notified us of the auto prior to any accident or
- c. Any non-owned auto while you or an employee of yours is temporarily driving it as a substitute for any other auto described in this definition because of its withdrawal from normal use for a period of not greater than 30 days without notification to us due to breakdown, repair, servicing, loss, or destruction. Coverage for PART III - DAMAGE TO YOUR AUTO does not apply to these temporary substitute autos.
- d. Trailers designed primarily for travel on public roads, even if such trailers are not shown in the Declarations, but only while upon a public road and connected to your insured auto. However, no coverage shall be provided for a trailer under PART III -DAMAGE TO YOUR AUTO, unless the appropriate premium has been paid for that coverage for such trailer.
- e. Mobile equipment, even if not shown in the Declarations, but only if

- it is permanently attached to your insured auto and your insured auto is in transit on a public roadway.
- 10. "Replacement auto" means any auto which you have acquired ownership of during the current policy term that has taken the place of an auto described in the Declarations due to:
 - termination of your ownership of the auto described in the Declarations; or
 - b. mechanical breakdown, deterioration or loss of the auto described in the Declarations, rendering it permanently inoperable.
- 11. "Non-owned auto" means any auto which is:
 - a. not owned by or registered to you, your nonresident spouse or a resident of the household in which you reside:
 - b. not hired, owned by or borrowed from your employees or members of their households; or
 - Not hired by you or an employee of yours, and if you are a person, not hired by a resident of the household in which you reside unless it is specifically listed on the policy Declarations.
- 12. "Occupying" means in, on, getting into, getting off, or getting out of.
- 13. "State" means the District of Columbia and any state, territory or possession of the United States and any province of Canada.
- 14. "Relative" means, if you are a person, any other person living in the household

- in which you reside who is related to you by blood, marriage or adoption, including a ward or foster child.
- 15. "Loss" means sudden, direct and accidental destruction of, theft or damage to your insured auto.
- 16. "Actual cash value" means the amount it would cost to replace the stolen or damaged property with property of like kind and quality. In the event replacement property of like kind and quality is unavailable, allowances can be made for the difference in value between the replacement and damaged property.
- 17. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

ADDITIONAL PREMIUM AGREEMENT

You acknowledge that the premium for each term of your Policy is determined by information in our possession at the inception date of the Policy period. Any change in this information during the period which would affect the rating of your Policy gives us the right to make an additional charge on a pro-rata basis. In addition, you have a duty to inform us of any such change.

- If a premium adjustment is necessary because of an error made by us or our agent, we shall:
 - Notify you of the nature of the error and the amount of additional premium required; and
 - Offer to cancel the policy pro rata based on the original (incorrect) premium for the period for which coverage was provided, or

- Offer to continue the policy for its full term with the correct premium applying for the entire term.
- If the premium revision results from erroneous or incomplete information supplied by you or on your behalf, we shall:
 - a. Correct the premium or rate retroactive to the inception date of the policy; and
 - b. Notify you of the reason for the amount of the change. If you are not willing to pay the additional premium billed, within ten (10) days of our demand for such premium, you may cancel the policy by not paying the additional premium. We will notify you of the date such cancellation becomes effective and compute any return premium based on the correct premium.
- 3. In the event we discover that additional premium is due when we adjust a claim under PART II EXPENSES FOR MEDICAL SERVICES TO INSUREDS or PART III DAMAGE TO YOUR INSURED AUTO, you agree that such premium may be deducted from the amount of payment otherwise due under such Parts if such payment is to benefit you either directly or indirectly.

Nothing contained in this section will limit our right to void this policy for breach of warranty or misrepresentation of any information by you.

PART I - LIABILITY TO OTHERS

Coverage A - Bodily Injury
Coverage B - Property Damage

We will pay damages, OTHER THAN PUNITIVE OR EXEMPLARY DAMAGES, for which an insured is legally liable because of an accident.

We will defend any lawsuit for damages which are payable under this Policy or settle any claim for those damages as we think appropriate. We have no duty to settle or defend any lawsuit or make any additional payments after we have paid or offered to pay the Limit of Liability for this coverage.

Additional Definitions Used in this Part Only:

When used in PART I - LIABILITY TO OTHERS, "Insured" means:

- 1. You:
- Any additional driver listed on your policy but only while driving your insured auto:
- Any other person driving your insured auto with your permission and within the scope of that permission;
- Any other person or organization, but only with respect to the legal liability of that person or organization for acts or omissions of any person otherwise covered under this PART I - LIABILITY TO OTHERS while driving your insured auto.

However, the owner or anyone else from whom you hire or borrow your insured auto is an insured with respect to that auto only if it is a trailer connected to an insured auto.

Additional Payments

For an insured, we will pay, in addition to our Limit of Liability:

 interest, on damages not exceeding our Limit of Liability, accruing after entry of judgment in any lawsuit we defend before we have paid or tendered payment of that portion of the judgment which does not exceed our Limit of Liability;

- premiums on appeal bonds and attachment bonds required in any lawsuit we defend, provided that we will not pay the premium for attachment bonds that are more than our Limit of Liability, and we have no duty to apply for or furnish these bonds;
- up to \$250 for a bail bond required because of an accident or traffic law violation arising out of the use of your insured auto, but we have no duty to apply for or furnish such a bond;
- reasonable expenses, except loss of earnings, incurred at our request;
- reasonable expenses, up to \$1,000, incurred by an insured for immediate medical or surgical relief to others necessary at the time of an accident resulting in bodily injury covered by this PART I -LIABILITY TO OTHERS provided that such expenses are not due to war;
- all costs we incur in any settlement of any claim.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, AN INSURED WILL NOT HAVE COVERAGE FOR AN ACCIDENT OR LOSS THAT OTHERWISE WOULD BE COVERED UNDER THIS PART I - LIABILITY TO OTHERS.

Coverage under this PART I and our duty to defend does not apply to:

- Bodily injury and property damage either expected or caused intentionally by or at the direction of an insured.
- Any liability assumed by an insured under any contract or agreement, including liability imposed upon an insured by statute arising from the insured's sponsorship of a minor for an operator's license.

- Any obligation assumed or expense incurred by any person claiming coverage under this Policy other than for emergency medical and surgical care imperative at the time of the accident.
- Any obligation for which an insured or the insurer of that insured, even if one does not exist, may be held liable under Workers' Compensation, unemployment compensation, or disability benefits law or any similar law.
- An accident for which any person is insured under nuclear energy liability insurance. This exclusion applies even if the limits of that insurance are exhausted.
- 6. Bodily injury to an employee of an insured, or a spouse, child, parent, brother or sister of that employee, arising out of or within the course of employment, except with respect to a domestic employee if benefits are neither paid nor required to be provided under any Workers' Compensation, disability benefits or other similar law. This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.
- Bodily injury to a fellow employee of an insured injured while within the course of their employment, except injuries for which the insured is legally liable.
- 8. Bodily injury or property damage involving an auto while being operated, used or maintained by any person when employed or engaged in the business of selling, repairing, parking, storing, servicing, or while delivering, testing, road testing, parking or storing autos, unless the business is your business, and it was warranted in your application.

- Property damage to any property owned by, rented to, being transported by, used by, or in the charge of an insured, including any motor vehicle operated or being towed.
- Bodily injury or property damage resulting from or caused by the loading or unloading of property with any device other than a hand truck.
- 11. Bodily injury or property damage resulting from or caused by the loading or unloading of property with a hand truck before the property is placed in or upon the insured auto or after it has been removed from the insured auto.
- 12. Bodily injury or property damage resulting from anyone who is not your employee loading or unloading an auto.
- 13. Bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any pollutants:
 - That are, or that are contained in any property that is:
 - Being transported or towed by, or handled for movement into, onto or from, the insured auto;
 - 2) Otherwise being transported by or on behalf of the insured; or
 - Being stored, disposed of, treated or processed in or upon the insured auto:
 - b. Before the pollutants or any property in which the pollutants are contained are moved from the place where they are accepted by the insured for movement into or onto the insured auto; or

c. After the pollutants or any property in which the pollutants are contained are moved from the insured auto to the place where they are finally delivered, disposed of or abandoned by the insured.

Paragraph a. does not apply to fuels, lubricants, fluids, exhaust gasses or other similar pollutants that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the insured auto or its parts, if:

- (1) The pollutants escape or are discharged, dispersed or released directly from an insured auto part designed by its manufacturer to hold, store, receive or dispose of such pollutants and is a part that would be required for the customary operation of the insured auto; and
- (2) The bodily injury or property damage does not arise out of the operation of any mobile equipment.

Paragraphs b. and c. of this exclusion do not apply to accidents that occur away from premises owned by or rented to an insured with respect to pollutants not in or upon an insured auto if:

- a. The pollutants or any property in which the pollutants are contained are upset, overturned or damaged as a result of the maintenance or use of an insured auto; and
- The discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage.
- 14. Any loss, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

- Bodily injury to you or an insured.
- 16. Bodily injury or property damage arising out of you or an insured participating in or preparing for an organized race, speed contest or performance contest.
- 17. Bodily injury or property damage due to war (declared or undeclared), civil war, insurrection, rebellion, revolution, or to any act or condition incident to these.
- 18. Any obligation for which the United States Government is liable under Federal Tort Claim Act.
- 19. Bodily injury or property damage resulting from the delivery of any liquid into the wrong receptacle or the wrong address, or from the delivery of one liquid in place of another.
- 20. Bodily injury or property damage resulting from the explosion or discharge of Class A and B explosives, poisonous gas, liquid gas, compressed gas, or radioactive material and all other materials and/or commodities as listed in the Motor Carrier Act of 1980 (49 CFR 173, 172.101, 173.389, 171.389, 171.8), manufactured, sold, transported, handled or distributed by an insured.
- 21. Bodily injury or property damage occurring outside any territory or possession of the United States and any province of Canada, or while an auto is being transported between their ports.
- 22. Bodily injury or property damage if your insured auto or a non-owned auto is attached to a trailer with load capacity in excess of two thousand (2,000) pounds if it is not listed in the Declarations and it:
 - a. is owned by you or your employee; or

- b. has been hired or borrowed by you or your employee for more than 60 consecutive calendar days.
- 23. Bodily injury or property damage caused by or through the ownership, use or operation of any mobile equipment or other apparatus attached to or pulled by your insured auto except while your insured auto is in transit on a public roadway.
- 24. Bodily injury or property damage arising out of the operation of your insured auto by any driver not meeting legal age requirements to operate a vehicle in the state shown in the declarations.

Limit of Liability

Regardless of the number of insured autos, separate premiums paid, insureds, claims made, vehicles involved or lawsuits brought, we will pay no more than the Limit of Liability shown for this coverage in the Declarations, subject to the following:

1. COVERAGE REQUIRED BY FILINGS:

If we are required by any applicable filing which we have made on your behalf to provide coverage not otherwise provided by this policy under this PART I - LIABIL-ITY TO OTHERS, to any person or organization, the coverage provided hereunder for such person shall be the minimum coverage required by law. If we are required to make any payment under this policy that would not have been made except for the certification, you must reimburse us.

2. COMBINED BODILY INJURY AND PROPERTY DAMAGE LIMITS:

Subject to Section 1 above, if your Declarations indicates that combined bodily injury and property damage limits apply, the most we will pay for the aggregate of all damages resulting from any one accident is the combined liability insurance limit shown in the Declarations.

3. SEPARATE BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY LIMITS:

Subject to Section 1 above, if your Declarations indicates that Separate **Bodly Injury Liability and Property** Damage Liability Limits apply:

- The bodily injury liability limit for "each person" listed on the Declarations page is the maximum we will pay for bodily injury sustained by any one person in any one accident, and only the limit for "each person" will apply to the aggregate of claims made for such bodily injury and any and all claims derived from such bodily injury including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium and wrongful death.
- b. Subject to the bodily injury liability limit for "each person", the bodily injury limit for "each accident" listed on the Declarations Page is the maximum we will pay for bodily injury sustained by two or more persons in any one accident, including all derivative claims which include, but are not limited to, loss of society, loss of companionship, loss of services, loss of consortium and wrongful death.
- The property damage liability limit for "each accident" listed on the Declarations page is the maximum we will pay for all property damage sustained in any one accident.

For the purpose of determining our Limit of Liability under sections 1, 2, or 3 above, all bodily injury and property damage resulting from continuous or repeated exposure to substantially the same conditions shall be considered as resulting from one accident.

An insured auto and a trailer or trailers attached thereto shall be deemed to be one auto as respects our Limit of Liability.

Any amount payable under PART I - LIABILITY TO OTHERS to or for an injured person will be reduced by any payment made to that person under any UNINSURED MOTORIST COVER-AGE, UNDERINSURED MOTORIST COVER-AGE, PERSONAL INJURY PROTECTION OR EXPENSES FOR MEDICAL SERVICES TO INSUREDS coverages of this policy.

Other Insurance

Subject to the above, if there is other applicable liability insurance for an accident covered by this PART I - LIABILITY TO OTHERS for a replacement auto, an additional auto or a non-owned auto used as a temporary substitute auto, coverage under this Policy will be excess to all other applicable insurance.

This coverage is primary when your insured auto which is a trailer is attached to an insured auto you own and is excess while attached to a motor vehicle you do not own.

If there is other applicable liability insurance for an accident covered by this PART I - LIABILITY TO OTHERS, we will pay the proportionate share our Limit of Liability bears to the total of all applicable liability limits.

If coverage under more than one policy applies as excess:

1. the total limits of liability under such excess coverages shall not exceed the difference between the limit of liability of the primary coverage and the highest limit of liability of any one of the excess coverages; and

- the difference between the limit of liability of the primary coverage and the highest limit of liability of any one of the excess coverages shall be referred to as the excess amount; and
- we shall be liable only for that percent of the excess amount that the Limit of Liability under this PART I - LIABILITY TO OTHERS bears to the total of all limits of liability for coverages applicable as excess.

If any applicable insurance other than this policy is issued by us and is applicable to a covered accident, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

PART II - EXPENSES FOR **MEDICAL SERVICES TO INSUREDS**

Coverage C - Medical Payments

If you purchase this coverage and it is shown on the Declarations page, we will pay medical expenses incurred by an insured caused by an accident.

Additional Definitions as used in this Part only:

"Insured" means any person occupying your insured auto while it is being driven by you or anyone with your permission and within the scope of that permission.

"Medical expenses" means reasonable, necessary and curative medical, surgical, dental, x-ray, ambulance, hospital and funeral services, including the cost of pharmaceuticals, orthopedic and prosthetic devices, incurred within one (1) year of the date of accident.

"Accident" means a sudden, unexpected and unintended event that causes bodily injury.

This coverage does not apply for bodily injury to any person:

- 1. Occurring during the course of employment if Workers' Compensation coverage should apply.
- Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
- 3. Caused while the insured is committing or attempting to commit a felony, or while the insured is involved in an illegal occupation. This exclusion does not apply when the felony is solely a violation of a Motor Vehicle Law.
- Caused by the operation of your insured auto by any driver not meeting legal age requirements to operate a vehicle in the state shown in the declarations.
- 5. Sustained while your insured auto is driven in or preparing for any prearranged or organized race, speed contest or performance contest.
- 6. Sustained by any person while occupying your insured auto while it is being used or maintained by a person when employed or engaged in the business of selling, repairing, parking, storing, servicing, delivering or while testing, road testing, parking or storing autos.
- 7. To any person entitled to receive similar services from the United States Government or its military services.

- 8. Sustained in any accident which occurs outside any state.
- 9. Sustained while using or occupying a non-owned auto or a temporary substitute auto.

Limit of Liability

Our Limit of Liability for payments provided under this PART II - EXPENSES FOR MEDICAL SER-VICES TO INSUREDS for covered medical expenses incurred by one or more persons in any one accident shall not exceed the amount stated in the Declarations for each accident. Regardless of the number of insured autos, premiums paid, Insureds injured, claims made, policies applicable, or vehicles involved in any one accident, we shall pay no more than the Limit of Liability shown for this coverage on the Declarations page for any one accident.

The limit for funeral expenses shall not exceed \$1,500 per person, subject to the maximum per accident limit of liability listed on the Declarations page for this coverage.

We will not be liable under this Policy for any medical expense paid or payable under the provisions of any:

- 1. Workers' Compensation or disability benefits law or any similar law; or
- 2. State No-Fault Law requiring personal injury protection coverage; or
- 3. premises insurance providing coverage for medical expenses; or
- individual, blanket, or group accident, disability or hospitalization; or
- medical, surgical, hospital or funeral services, benefit or reimbursement plan.

Any amount paid or payable under PART I -LIABILITY TO OTHERS or the UNINSURED MOTORIST COVERAGE OR UNDERINSURED MOTORIST COVERAGE of this policy shall be deducted from the amounts payable under this PART II if the **insured** has been fully compensated for his/her injuries.

Other Insurance

If there is other applicable medical payment insurance for medical expenses covered by this PART II - EXPENSES FOR MEDICAL SER-VICES TO INSUREDS, we shall pay the proportionate share our Limit of Liability bears to the total of all applicable medical payments limits. HOWEVER, COVERAGE AFFORDED UNDER PART II - EXPENSES FOR MEDICAL SER-VICES TO INSUREDS OTHER THAN YOU OR A **RELATIVE** IS EXCESS OVER SUCH OTHER APPLICABLE MEDICAL PAYMENT INSUR-ANCE, AND IS THEN AFFORDED ONLY IN THE AMOUNT BY WHICH THE LIMIT OF LIABILITY UNDER THIS PART II - EXPENSES FOR MED-ICAL SERVICES TO INSUREDS EXCEEDS THE LIMIT OF LIABILITY OF OTHER MEDICAL PAYMENTS INSURANCE AVAILABLE TO SUCH PERSON.

If any applicable insurance other than this policy is issued by **us**, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

PART III - DAMAGE TO YOUR AUTO

Coverage D - Comprehensive

If you pay a specific premium for Comprehensive coverage, as shown in the Declarations, we will pay for loss to your insured auto, less any applicable deductible, caused by means other than are covered under Coverage E - Collision. Any deductible amount shall apply separately to each loss.

Any loss caused by missiles, falling objects, fire, theft, collision with an animal or accidental glass breakage shall be deemed a Cornprehensive loss.

Coverage E - Collision

If you pay a specific premium for Collision coverage, as shown in the Declarations, we will pay for loss to your insured auto, less any applicable deductible, when it collides with another object or overturns. Any deductible amount shall apply separately to each loss.

Coverage F - Fire and Theft with Combined Additional Coverage (CAC)

If you pay a specific premium for Fire and Theft with Combined Additional Coverage (CAC), as shown in the Declarations, we will pay for loss, less any applicable deductibles, caused by:

- 1. fire;
- 2. theft;
- 3. windstorms;
- 4. hail:
- earthquakes;
- 6. explosions;
- 7. the forced landing or falling of any aircraft or its parts or equipment;
- 8. flood or rising waters;
- 9. malicious mischief or vandalism;
- external discharge or leakage of water except loss resulting from rain, snow, or sleet whether or not wind driven; or
- 11. Collision with a bird or animal.

No losses other than those specifically described above will be covered under the terms of this Policy. Any deductible will apply separately to each loss.

Additional definitions used in this Part only:

- 1. "Fire" means:
 - a. fire or lightning, or
 - b. smoke or smudge due to a sudden, unusual, and faulty operation of any fixed heating equipment serving the premises on which the insured auto is located, or
 - c. the stranding, sinking, burning, collision, or derailment of any conveyance in or upon which the insured auto is being transported.
- 2. "Theft" means theft, larceny, robbery, or pilferage.
- "Your insured auto" means any auto described on the Declarations page, including any permanently attached equipment included in the Limit of Liability shown on the Declarations or by endorsement attached to this Policy, or any replacement auto, if the auto being replaced previously had DAMAGE TO YOUR AUTO COVERAGE and we are notified within 30 days of acquisition of the replacement auto.

EXCLUSIONS - PLEASE READ THE EXCLU-SIONS CAREFULLY. IF AN EXCLUSION APPLIES, YOU WILL NOT HAVE COVERAGE FOR A LOSS THAT OTHERWISE WOULD BE COVERED UNDER THIS POLICY.

This coverage does not apply to loss:

 Caused by war (declared or undeclared), any warlike action, any action taken to defend against an actual or expected attack, civil war or commotion, insurrection, rebellion, revolution, or nuclear contamination, regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

- 2. To any sound equipment, video equipment or transmitting equipment not permanently installed in your insured auto, or to tapes, records, or similar items used with sound equipment.
- 3. To radar detectors.
- 4. To camper units, pickup covers, caps or shells which are not permanently installed in your insured auto.
- 5. To tarpaulins, binders, chains, or any other cargo securing devices.
- 6. Resulting from manufacturer's defects, wear and tear, freezing, mechanical or electrical breakdown or failure. But, coverage does apply if the damage is the result of other loss covered by the Policy.
- 7. To your insured auto when it is in the care, custody or control of any person for the purpose of selling it.
- 8. To wearing apparel, tools, or personal effects.
- 9. While your insured auto is used in any illicit trade or transportation.
- 10. Due to use of your insured auto for transportation of any explosive substance, flammable liquid, or similarly hazardous material other than substances transported for common household usage.
- 11. Caused by vou or an insured participating in or preparing for an organized race, speed contest or performance contest.
- 12. While your insured auto is subject to any bailment lease, conditional sale, mortgage or other encumbrance not specifically declared and described on the Declarations.

- Due to theft or conversion of your insured auto:
 - a. by you, a relative or a resident of your household or an employee;
 - b. prior to its delivery to you; or
 - while it is in the care, custody or control of anyone for the purpose of selling your insured auto.
- 14. To your insured auto while in anyone else's possession under a written trailer exchange agreement, provided that this exclusion shall not apply to a loss payee. If we pay the loss payee, you must reimburse us for payment.
- To any non-owned auto or temporary substitute auto.
- To any trailer, unless a premium has been paid for DAMAGE TO YOUR AUTO COV-ERAGE for the trailer involved in the loss.

Limit of Liability

The most we will pay for loss to your insured auto is the least of:

- the actual cash value of the stolen or damaged property at the time of loss reduced by the applicable deductible;
- the amount necessary to repair or replace the property with other of like kind and quality reduced by the applicable deductible and subject to any other endorsement or policy provisions;
- the applicable Limit of Liability shown in the Declarations or in the endorsements to this policy,
- the amount necessary to repair or replace with new property, less any applicable depreciation and deductible.

When we determine our payment for loss to your insured auto, any salvage value of your insured auto as a result of loss may at our option be deducted from 1, 2, 3 or 4 above. If we pay the actual cash value of your insured auto or the limit of liability as stated within the policy, less the deductible, we are entitled to all salvage.

A separate deductible applies to each insured auto involved in the loss.

If we repair the property, we shall not be responsible for any diminution in value of the property caused by the loss. If repair or replacement of damaged property increases the overall value of your insured auto, we may deduct this amount from the repair cost.

If the Limit of Liability shown on the Declarations for the **insured auto** involved in the **loss** is less than 90% of the **actual cash value** at the time of **loss**, **you** will share with **us** in the cost of repair or replacement as follows:

- We will pay the same proportion of the loss which the Limit of Liability shown in the Declarations or in the endorsements to this policy for your insured auto involved in the loss bears to the actual cash value of your insured auto at the time of loss.
- We will reduce the amount of loss by the appropriate deductible shown in the Declarations prior to calculating the proportionate amount we will pay.

No Benefit to Bailee

These coverages shall not directly or indirectly benefit any carrier or other bailee for hire liable for loss to your insured auto.

Appraisal

If we cannot agree with you on the amount of your loss, then you or we may demand an appraisal of the loss. Each party shall appoint a competent and disinterested appraiser. If the

appraisers agree on the amount of the loss, they shall submit a written report to us and this shall be deemed to be the amount of the loss.

If the appraisers cannot agree within a reasonable time, they shall then choose a competent, impartial umpire, provided that if they cannot agree on an umpire within fifteen (15) days, either you or we may petition a judge of a court having jurisdiction to choose an umpire. The disagreement of the appraisers shall then be submitted to the umpire. Subject to the provisions of the Policy, a written agreement signed by two of these three will then be the amount of the loss.

You must pay your fees and expenses and those of your appraiser. We will pay our fees and expenses and those of our appraiser. We shall share evenly with you;

- 1. payment of the umpire; and
- 2. all other expenses of the appraisal.

By agreeing to appraisal, we do not waive any of our rights under any other part of this Policy, including our right to deny the claim.

Payment of Loss

We may pay the loss in money or repair or replace the damaged or stolen property. We may, at any time before the loss is paid or the property is replaced, return, at our expense, any stolen property either to you or to the address shown on the declarations page, with payment for the resulting damage less any applicable deductibles. We may keep all or part of the property at the agreed or appraised value, but there shall be no abandonment to us.

We may make payment for a loss to you or the owner of the property. Payment for a loss is required only if you have fully complied with the terms of this Policy.

Other Insurance

If there is other applicable insurance on a loss covered by this PART III - DAMAGE TO YOUR AUTO, we will pay the proportionate share our Limit of Liability bears to the total limits of all applicable similar insurance.

PART IV - GENERAL PROVISIONS

1. Policy Period

Subject to other provisions in the policy, this Policy applies only to accidents, losses and occurrences during the Policy period shown in the Declarations.

2. Changes

This Policy with the Declarations includes all the agreements between you and us relating to this insurance. No change or waiver may be effected except by endorsement issued by us. It is your responsibility to notify us immediately of any changes to drivers or vehicles.

3. Two or More Autos insured

With respect to any accident or occurrence to which this and any other Policy issued to you by us applies, the total limit of our liability under all the Policies shall not exceed the highest applicable Limit of Liability under any one Policy.

4. Suit Against Us

We may not be sued unless there is full compliance by you or an insured with all the terms of this Policy. We may not be sued under the PART I - LIABILITY TO OTHERS coverage until the obligation of an insured to pay is finally determined by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and us.

5. Our Recovery Rights

In the event of any payment under this Policy, we are entitled to all the rights of recovery of the person or organization to whom payment was made. That person or organization must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights, and do nothing after loss or accident to harm our rights.

When a person has been paid damages by us under this Policy and also recovers from another, the amount recovered from the other shall be held in trust for us and reimbursed to us to the extent of our payment, provided that the person to or on behalf of whom such payment is made is fully compensated for their loss.

In the event recovery has already been made from the responsible party, any rights to recovery by the person(s) claiming coverage under this policy no longer exist.

6. Assignment

Interest in this Policy may not be assigned without our written consent. If the Policyholder named in the Declarations is a person and that person dies, the Policy will cover:

- a. the survivor;
- the legal representative of the deceased person while acting within the scope of duty of a legal representative; and
- any person having proper custody of your insured auto until a legal representative is appointed, but in no event for more than thirty (30) days after the date of death.

7. Waiver

Notice to any agent or knowledge possessed by any agent or other person shall not change or effect a waiver on any portion of this Policy nor stop us from exerting any of our rights under this Policy.

8. Bankruptcy

We are not relieved of any obligation under this Policy because of the bank-ruptcy or insolvency of an insured.

9. Inspection and Audit

We shall have the right to inspect your property and operations at anytime. This includes, but is not limited to, the right to inspect and audit the maintenance of any autos covered hereunder, who your drivers are and what their driving records are, and your radius of operations. In doing so, we do not warrant that the property or operations are safe and healthful, or are in compliance with any law, rule or regulation.

We shall also have the right to examine and audit your books and records at any time during the Policy period and any extensions of that period and within three (3) years after termination of the Policy, as far as they relate to the subject matter of this insurance.

10. Fraud and Misrepresentation

This Policy shall be void if you or an insured has concealed or misrepresented any material fact, or in case of any fraud or attempted fraud touching any matter regarding this Policy, whether before or after a loss or accident.

11. Terms of Policy Conformed to Statutes

Terms of this Policy which are in conflict with the statutes of the state in which this Policy is issued are hereby amended to conform to the statutes.

CANCELLATION OF THIS POLICY

- You may cancel this policy by mailing or delivering to us advance written notice of cancellation or by not paying a premium installment when it comes due. The cancellation date can be no earlier than 12:01 a.m. on the day after your written request is postmarked.
- If you cancel this policy by not paying a premium installment when it is due, we will provide you written notice of cancellation, at your last mailing address known to us, at least 10 days before the effective date of cancellation.
- We may cancel this policy by mailing or delivering to you and your representative in charge of the subject of the insurance, if applicable, written notice of cancellation, including the actual reason for the cancellation, to the last mailing address known to us, at least 45 days before the effective date of cancellation, except as provided below.
- 4. We will also mail to any lienholder, pledgee or other person shown in this policy with a financial interest in your insured auto, at their last mailing address known to us, the same written notice of cancellation that we provide to you.
- 5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

- 6. If this policy is canceled, we will send you any premium refund due. If we cancel, the refund will be pro rata. If you cancel, we will return 90% of the calculated pro-rata refund.
- 7. If notice is mailed, proof of mailing will be sufficient proof of notice.

NONRENEWAL OF THIS POLICY

- We may elect not to renew or continue this policy by mailing or delivering to you written notice before the end of the policy period including the actual reason for nonrenewal. If we fail to provide notice within 30 days of the end of the policy period, the policy will continue in effect until 30 days from the date of the notice. You will be responsible for any premiums due while the policy is in effect. If we offer to renew or continue and you do not accept, this policy will terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.
- If we fail to mail or deliver proper notice of nonrenewal and you obtain other insurance, this policy will end on the effective date of that insurance.

Secretary

his DIO

President

32

1050 1194

EXHIBIT C:

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE



STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT

JAN COOK, ASSOCIATE COMMISSIONER

SUSAN D. PARKER, PhD, ASSOCIATE COMMISSIONER

Competition of the second of t

WALTER L. THOMAS, JR. SECRETARY

STATE OF ALABAMA
MONTGOMERY COUNTY

I, Walter L. Thomas, Jr., do hereby certify that I am Secretary of the Alabama Public Service Commission, and I further certify that the attached copies of the Form E and Form K for JMP Enterprises, Inc. are true copies as they appear in the records and files of the Commission.

I do further certify that I, as Secretary of the Alabama Public Service Commission, am the official custodian of its books, records, and seal, and the proper officer to make and certify copies of such books and records, and that this attestation is in due form and that the seal hereto affixed is the official seal of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the Alabama Public Service Commission at Montgomery, Alabama, on this the 19th day of June 2007.

Walter L. Thomas, Str., Secretary Alabama Public Service Commission

Blumberg No. 6719

EXHIBIT

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY-CERTIFICATE OF INSURANCE

Filed with the ALABAMA PUBLIC SERVICE COMMISSION (hereinafter called Commission) of PO BOX 304260, MONTGOMERY, AL 36130

This is to certify, that the PROGRESSIVE SPECIALTY INSURANCE COMPANY (hereinafter called Company) of PO BOX 94739, CLEVELAND, OH 44101 has issued to JMP ENTERPRISES, INC of 2205 GREENVILLE ROAD, LAGRANGE, GA 30240 a policy or policies of insurance effective from 08/01/2004 12:01 A.M. standard time at the address of the insured stated in said policy or policies and continuing until cancelled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days notice in writing to the State Commission, such thirty (30) days notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at 6300 WILSON MILLS, MAYFIELD VILLAGE, OH 44143 this 3rd day of September, 2004

Insurance Company File No. CA 08263817

(Policy Number)

MC1633a(08/99)

(Authorized Company Representative

IRB3539B

FORM K
UNIFORM NOTICE OF CANCELLATION OF
MOTOR CARRIER INSURANCE POLICIES

290134

Check Type Cancelled
Bl and PD

MONTGOMERY, AL

Cargo

Filed with ALABAMA PUBLIC SERVICE COMMISSION (hereinafter called Commissi 36130

This is to advise that under the terms of a policy or policies issued to:

JMP ENTERPRISES, INC of 2205 GREENVILLE ROAD, LAGRANGE, GA 30240 by PROGRESSIVE SPECIALTY INSURANCE CO. of 6300 WILSON MILLS, MAYFIELD VILLAGE, OH 44143

Said policy or policies, including any and all endorsements forming a part thereof or certificates issued in connection therewith, is (are) hereby cancelled effective as of the 20th day of November, 2005, 12:01 A.M., standard time at the address of the insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the Commission.

Insurance Company File No. CA 08263817 (Policy Number)

(Constant of Incural)

Alabama Public Service Commission
Date June 17, 2007

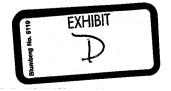
EXHIBIT D:

SUBPOENA TO UNIVERSITY AGENCY

Issued by the United States District Court

MIDDLE	DISTRICT OF	EASTERN DIVISION
PROGRESSIVE PREFERRED INSURANCE CO. V.		THIRD PARTY SUBPOENA IN A CIVIL CASE
IMP ENTERPRISES, INC., JOHN MARK PARKER AND JENNIFER M. GOLDER		Case Number: 1 3:06-CV-00934
TO: UNIVERSITY AGENCY, INC. P. O. BOX 3067, AUBURN, ALABAMA 3683	1 .	
YOU ARE COMMANDED to appear in the Unitestify in the above case.	ited States Distric	ct court at the place, date, and time specified below
LACE OF TESTIMONY		COURTROOM
		DATE AND TIME
YOU ARE COMMANDED to appear at the plac in the above case.	e, date, and time	specified below to testify at the taking of a deposition
LACE OF DEPOSITION		DATE AND TIME
YOU ARE COMMANDED to produce and perm place, date, and time specified below (list docum AS DESCRIBED ON THE ATTACHED LIST	nents or objects):	
Office of Howard Dunn Howard & Howard, 102 1148, Wetumpka, Alabama 36092		6/19/2007 8:00 am
YOU ARE COMMANDED to permit inspection	n of the following	g premises at the date and time specified below.
REMISES		DATE AND TIME
Any organization not a party to this suit that is subpoeirectors, or managing agents, or other persons who consentaters on which the person will testify. Federal Rules of SSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF AT	ent to testify on its f Civil Procedure, 1 TORNEY FOR PLAIN	behalf, and may set forth, for each person designated, t. 30(b)(6). NTIFF OR DEFENDANT) DATE
SSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	41-1	204 507 4050
9. Houston Howard II, P. O. Box 1148, Wetumpka, .	Alabama 36092;	334-567-4356
(See Rule 45, Federal Rules of Ci	ivil Procedure. Subdivision	ns (c), (d), and (e), on next page)
		1 2 7

¹ If action is pending in district other than district of issuance, state district under case number.



Case 3:06-cv-00934-WKW-	TFM Document 29-5	Filed 07/10/2007	Page 3 of 5
	PROOF OF SERVICE	,	
DATE	PLACE		
SERVED			
SERVED ON (PRINT NAME)	MANNE	ER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE		
	DECLARATION OF SER	VER	
I declare under penalty of perjury under in the Proof of Service is true and correct.	the laws of the United States of	America that the forego	ing information contained
Executed on	SIGNAT	URE OF SERVER	
	ADDRE	SS OF SERVER	

Lule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held:

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
 - (B) If a subpoena
- (i) requires disclosure of a trade secret or other confidential research, development, commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not acscribing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

- (C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.
- (2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.
- (e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

The following documents are to be produced:

- 1. The Application for Policy number 08263817-0, which policy was issued by Progressive to JMP Enterprises, Inc., or if you have no application for such policy, the application for the first or most recent predecessor policy for which you have an application.
- 2. Your complete file concerning Progressive Policy Number 08263817-0.
- 3. A full and complete copy of Progressive Policy Number 08263817-0, including the Declaration's Page and all policy provisions and endorsements.
- 4. All correspondence to JMP Enterprises, Inc. or any of its agents, servants, or employees, (including but not limited to John Mark Parker and Jill Parker) concerning Progressive Policy Number 0863817-0.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: UNIVERSITY ACENCY TWO P, O. BOX 3067 AUBURN AL 36831	A. Signature X
· ·	4. Nestricted Delivery? (Extra 1 66)
2. Article Number 7004 2 (Transfer from service label)	510 0007 1464 7837
PS Form 3811, February 2004 Domestic Re	turn Receipt 102595-02-M-15

EXHIBIT E:

UNIVERSITY AGENCY FILE

Progressive®

UNIVERSITY AGCY INC PO BOX 3067 AUBURN, AL 36831

Named Insured:

JMP ENTERPRISES INC PO BOX 3501 LAGRANGE, GA 30241

Policy number: 01773934-4

Progressive Specialty Insurance Company July 8, 2004 Policy Period: Aug 1, 2004 - Feb 1, 2005 Page 1 of 3

personal.progressive.com

Make payments, check billing activity or check status of a claim.

334-887-6569

UNIVERSITY AGCY INC

by forms 1197 (08/93), 1349 (12/96), 1602 (08/83), 1857

Contact your agent during business hours.

800-444-4487

For policy service and claims service, 24 hours a day, 7 days a week.

Commercial Auto Insurance Coverage Summary

This is your Renewal **Declarations Page**

This Renewal Declarations Page is effective only if the minimum amount due to renew your policy is received or postmarked by

Your coverage begins on August 1, 2004 at 12:01 a.m. This policy expires on February 1, 2005 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for an auto may not be combined with the limits for theruto, unless the policy contract allows the stacking of

(03/96), 2000A (12/96), 3098 (12/96), 33! limits. The policy contract is form 1050 (1:

632 (06/71) and 4792A (01/03). The named insured organization type is a -

Outline of coverage

Description	PAPILEO		Deductible	Premium
Liability To Others	8-1-04			\$5,095
Bodily Injury and Property Damage Liabilit	<i>G</i> ,	d single limit		
Uninsured/Underinsured Motorist		'\$40,000 each accident		175
Medical Payments				131
Comprehensive				438
See Schedule Of Covered Autos	Limit of liability les	s deductible		
Collision				1,875
See Schedule Of Covered Autos	Limit of liability les	s deductible		
Subtotal policy premium				\$7,714
Fees				75
Total 6 month policy premium				\$7,789

Rated drivers

1. MARK PARKER

2. JILL PARKER

6-14-07





Progressive Corp. 7/30/2004 3:51 PAGE 2/10 RightFAX

07/30/04 RR:04/04 GEORGIA ADVANTAGE

JMP ENTERPRISES INC POLICY #: 08263817-0 QUOTE #: 0623JM62A

UPLOAD MESSAGE: This application has not been uploaded.

COMPANY INFORMATION:

PROGRESSIVE INSURANCE COMPANIES P.O. Box 94739 Cleveland OH 44101

AGENT INFORMATION: TOTAL PREMIUM: 11330.00 POLICY #: 08263817-0 GENERIC

DOWN PAYMENT: 2945.00 LEVEL: ADVANTAGE

YMA BALANCE DUE: 8385.00

ANY, VT 05495 DOWNPAY REQ: 2945.00 POLICY TERM: ANNUAL

() – CA-28270 PAY PLAN: 10-PAY

DOWNPAY METH: CASH/CHECK/MONEY ORDER INTERNAL PROCESSING (Do Not Retain Commission)

(\$5.00 fee included for each installment payment)

----- NAMED INSURED / BUSINESS -----

EFF DATE: 07/29/04 EFF TIME: 03:50PM

BUSINESS TYPE: SERVICES

SUB BSNS TYPE: SERVICES NOT OTHERWISE CLASSIFIED

OTHER: MOBILE HOME TOTER

1. Are any of the listed vehicles rented or leased to others? NO 2. Are at least half of the vehicles listed on this policy used in the business? YES

APPLICANT: Individual/Sole Prop.(I), Partnership (P), or Corp (C)? C

EMPLOYER IDENTIFICATION NUMBER: 582159875

NAME: JMP ENTERPRISES INC

DRA:

ADDR: PO BOX 3501

LA GRANGE , GA 30241-INSURED'S PHONE: (706)881-5301

INSURED'S E-MAIL:

NONE

Consequence &

Progressive Corp. 7/30/2004 3:51 PAGE 3/10 RightFAX

*********	******	****	*****	*****	*****	*****	****
07/30/04 RR:0	4/04 GEORGIA		ADVAN	TAGE			PAGE 2
JMP	ENTERPRISES INC	POLICY	#: 08263	817-0	QUOTE	# : 0623	JM62A
*********	******	******	******	****	****	****	*****
		EHICLE INFORM	ATION	- -			
VEH		ÆHICLE ID		BODY	USE		
# YR MAKE	MODEL	NUMBER			CLASS		
1 1992 INTL		1HSHBAZN7NH	443814	01	H		
2 2030 NON O	ATTACHED TRLR	NONE		20	H		
3 2000 FORD	F650 SUPER DUTY	3FDNW6540YM	A03102	63	H		
VEH TRAILER	PERSONAL	GARAGIN	G Si	TATED		DR	
# HITCH	USE	ZIP T	ERR AI	4T	RADIUS		
1	N	30240 7	8	25000		2	
2		30240 7	2			2	
3	N	30240 7 30240 7	8 ,	28000	100	1	
3	Δ1	30240 /	5	20000	100	-1-	
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	icle used for bus	ineaa nexae	anl or bot	- h o T	OTTO TIMEO	ONT W	
						2 ONTI	
Z. IS CHIS VEH.	icle primarily us	ed to haur g	oods for t	cners:	? IES		
7.777.7							
VEH 2				_			
1. Is this vehi	cle used for bus	iness, perso	nal or bot	:h? E	BUSINES	SONLY	
2. Is this vehi	icle primarily us	ed to haul 'g	oods for d	thers	YES		
VEH 3							
1. Is this vehi	icle primarily us	ed to haul g	oods for d	thers?	YES		
							_
		- LOSS PAYEE			. 		
1 SUN TRUST	PO BOX 7	031	PASA	DENA	(CA.	91109
3 SUN TRUST	PO BOX 7	031	PASA	DENA	(CA CA	91109
	DRIVER	INFORMATION	- LIST ALL	DRIVE	RS		
	curately and com						
	mium differences					. Oll mory	
1000110 111 610		aria bervice	aciayb.,				
		BIRTH	M א דידיא ד.		SR22		
DR# DRIVER'S NAM	TE .	DATE AGE	UMICI IMM				
1 JOHN PARKER		0/20/68 35	SIMICO	1	/N (-MOE #	
	1	U/ZU/bo 35	MARKIED		FN.		
2 JILL PARKER		2/19/73 30 CIAL I	MARKIED		IN	WD CDT	
DD# TTOTAL TOTAL	SO	CIAL I	INCLUDED	700	CDL	YK CDL	
DR# LICENSE NUM	BER ST SE	CURITY # 1	DRVR Y/N	P.I.S	Y / N	ISSUED	
			,		- /		
1 025286805 2 049592541	GA 26	0453157	N N	0 0	Y	1986	

Progressive Corp. 7/30/2004 3:51 PAGE 4/10 RightFAX

~~~~~ 07/30/04 RR:04/04 GEORGIA ADVANTAGE PAGE 3
JMP ENTERPRISES INC POLICY #: 08263817-0 QUOTE #: 0623JM62A

______PROOF OF PRIOR QUESTIONS------

Is Applicant currently insured? YES

Which Company is your current policy with? PROGRESSIVE INS CO -COMMERCIAL PO What is your current policy number? 1773934-3

Effective Date of Current Insurance Coverage: 02/01/04

Expiration Date of Current Insurance Coverage: 08/01/04

What is the liability limit closest to the insured's current policy:

1000 CSL Has Applicant had continuous coverage for at least one year? YES

Failure to provide(fax) proper Proof of Current Insurance may result in a change in market.

-----UNDERWRITING QUESTIONS-----Does Applicant require Any Waivers of Subrogation? No How Many? 0 (Attach list of names & addresses)

Number of Additional Insureds Required

FILINGS:

Do we insure all commercial vehicles the insured owns? YES Do we insure all vehicles that the insured uses in their business? YES

Must Applicant Comply with the Motor Carrier Act of 1980 (MCS90)? Yes If Yes, Does Applicant Haul Hazardous Waste? No If Yes, Risk is UNACCEPTABLE. Do NOT Submit.

Does Applicant Require an ICC Filing? Yes

How Many? 2 Does Applicant Require a State Filing? Yes (Attach list of names & addresses)

1998 Year the business was established? Year the Principal Operator started in current industry / occupation? 1988

Does the insured currently have General Liability Insurance or a Business Owners Policy?

Progressive Corp. 7/30/2004 3:51 PAGE 5/10 RightFAX

**************************************			ADVANTAGE	PAGE 4 CTE #: 0623JM62A
*****************	******	*******	******	**********
		COVERAGES		
MODEL YR 1992	2030	2000	VEH	
USE/BODY H/01	H/20	H/63	1	2 3
BI-PD 1000 CSL	1000 CSL	1000 CSL	4836	1107 2420
UM-UIM 25/50	NONE	25/50	42	0 42
UMPD 25 W/ 250		25 W/ 250	22	0 22
MED-PAY 2,000		2,000	25	0 35
FR-THFT N/A	N/A	N/A	0	0 0
COMP 1,000	n/A	1,000	242	0 219
COLL 1,000	N/A	1,000	1092	0 1076
ON-HOOK NONE	NONE	NONE	. 0	0 0
NON-TRK NONE	NONE	NONE	0	0 0
		Dr #/!	 6259 Marital/Age: 2M3	1107 3814 30 2M30 1M35
_				
SubTotal		11180.0	00	
Add'l Coverages				
NON-OWNED NON HIRED-AUTO NON			0	
GKLL1 NON			0	
GKLL2 NON			0	
GKLL3 NON			0	•
TRLR-INT NON			0	
SubTotal		0.0	00	
ICC Filing Fee		50.0	0.0	
05-5- 7:1: 7		30.0		

Total Premium 11330.00

COVERAGE DESCRIPTION TRLR-INT NONE

State Filing Fee

Total Fees:

100.00

150.00

Progressive Corp. 7/30/2004 3:51 PAGE 6/10 ************************ 07/30/04 RR:04/04 GEORGIA ADVANTAGE JMP ENTERPRISES INC POLICY #: 08263817-0 QUOTE #: 0623JM62A ***************** REPORT ALL ACCIDENTS IMMEDIATELY 24 HOURS A DAY, 7 DAYS A WEEK 1-800-274-4499 Call us immediately so we can go to work for you. INSTRUCTIONS TO INSURED IN CASE OF ACCIDENT OR LOSS: 1. Obtain full names, addresses, phone numbers, and license numbers of all persons involved and all witnesses. 2. Do not admit liability or discuss the accident with anyone except police or company representative. 3. Call Progressive immediately. NOTE: FOR QUESTIONS REGARDING YOUR POLICY OR BILL, PLEASE CALL: 1-877-776-2436 ***************************** ----------NOTES SECTION------SERVICES NOT OTHERWISE CLASSIFIED SERVICES MOBILE HOME TOTER

Progressive Corp. 7/30/2004 3:51 PAGE 7/10 RightFAX

payment is returned from the bank unpaid.

OMP ENTERPRIABE INC POLICI #: 06263617-0 Q0015 #: 062501052A

The insured hereby applies to Company for a policy of insurance as set forth in this application on the basis of statements contained herein. The insured agrees that such policy shall be null and void if such information is false, or misleading, or would materially affect acceptance of the risk by the Company. The insured understands that this application becomes part of the insurance policy. The insured agrees to submit to loss control inspections as often as the Company may reasonably require. The insured agrees that refusal to submit to an inspection is grounds for cancellation of this policy. The insured agrees that no coverage will be bound and this policy shall be void from inception if the payment is not honored by the bank. The insured understands that a service charge of \$20.00 will be assessed if any check offered in

The insured agrees to pay the installment fees shown on the billing statement that become due during the policy term and each renewal policy term in accordance with the payment plan the insured selects. The insured understands that the amount of these fees may change upon policy renewal or if the insured changes the payment plan. The insured also understands that the amount of these fees may change if the premium is increased due to inaccurate or incomplete information in this application.

The insured agrees to pay a late fee of \$5.00 during the policy term and each renewal policy term when the minimum amount due is not paid or payment is postmarked more than 02 days after the premium due date. The amount of this fee may change upon policy renewal.

The insured acknowledges that the Company may collect information from consumer reporting agencies, such as driving record. This information will be used to underwrite the insurance and provide an accurate quote in one of Progressive's underwriting companies. Future reports may be used to update or renew the insurance. The insured also acknowledges that information may be disclosed without authorization, as required or permitted by law. The insured may access and correct information believed to be inaccurate. Complete details are in the Company's Privacy Policy, which will be provided with the insurance policy and upon request. The insured has or will obtain from existing and new drivers employed or contracted by the insured, an acknowledgment that their driving record information may be disclosed to the insured or their employer, contractor or agent in connection with the insurance being applied for hereunder.

Signature of Insured

Date: 7-30-04

Case 3:06-cv-00934-WKW-TFM Document 29-6 Filed 07/10/2007 Page 9 of 48

Progressive Corp. 7/30/2004 3:51 PAGE 8/10 RightFAX

Progressive Corp. 7/30/2004 3:51 PAGE 9/10 RightFAX

07/30/04 RR:04/04 GEORGIA ADVANTAGE PAGE
JMP ENTERPRISES INC POLICY #: 08263817-0 QUOTE #: 0623JM62

UNINSURED MOTORIST COVERAGE - ELECTION OF LOWER LIMITS
I have been offered and I have rejected the option to purchase Uninsured Motorist Coverage for bodily injury and property damage in an amount equal to the limits I have selected for liability coverage. Instead, I elect the lower limits of Uninsured Motorist Coverage selected below. I understand that Uninsured Motorist Coverage for bodily injury protects me, my resident relatives, and occupants of a covered vehicle if any of us sustain bodily injury, including any resulting death, in an accident in which the owner or operator of a motor vehicle who is legally liable does not have insurance, or has liability insurance or a bond with limits lower than my Uninsured Motoris Coverage limit.
I understand and agree that this rejection of the higher limits and election of lower limits shall be binding on all persons insured under the policy, and that this election shall apply to any renewal, reinstatement, substitute, amended, altered, modified, or replacement policy with this company or any affiliated company, unless a named insured revokes this election or selects a different option.
Uninsured Motorist Coverage
<pre>Motorist Coverage X \$25,000 each person/\$50,000 each accident bodily injury \$50,000 each person/\$100,000 each accident bodily injury \$100,000 each person/\$100,000 each accident bodily injury \$100,000 each person/\$300,000 each accident bodily injury \$300,000 each person/\$300,000 each accident bodily injury \$350,000 each person/\$350,000 each accident bodily injury \$250,000 each person/\$500,000 each accident bodily injury \$500,000 each person/\$500,000 each accident bodily injury \$750,000 each person/\$750,000 each accident bodily injury \$1,000,000 each person/\$1,000,000 each accident bodily injury</pre>
Uninsured Motorist Coverage - Property Damage _X_\$25,000 each accident property damage _\$50,000 each accident property damage _\$100,000 each accident property damage \$100,000 CSL each accident property damage \$300,000 CSL each accident property damage \$350,000 CSL each accident property damage \$500,000 CSL each accident property damage \$750,000 CSL each accident property damage \$1,000,000 CSL each accident property damage
Uninsured Motorist Coverage - Property Damage Deductible
X\$250 each accident \$500 each accident \$1,000 each accident
Signature of Named Insured Date 7-30-04
I () 2/2 / / / / / / / / / / / / / / / / /
Form 0702 C3 C3/(11/02)
Form 2702 GA CV(11/02)

UNIVERSITY AGCY INC PO 80X 3067 AUBURN, AL 36831



Commercial Auto Insurance Coverage Summary

Document 29-6

This is your Declarations Page

The named insured organization type is a corporation.

PROGRESSIVE

Policy number: 08263817-0

Progressive Preferred Insurance Company August 10, 2004 Policy Period: Aug 1, 2004 - Aug 1, 2005 Page 1 of 2

personal.progressive.com

Make payments, check billing activity or check status of a claim.

334-887-6569

UNIVERSITY AGCY INC

Contact your agent during business hours.

800-444-4487

For policy service and claims service. 24 hours a day, 7 days a week.

Your coverage began the later of August 1, 2004 at 12:01 a.m. or at the time your application is executed on the first day of the policy period. This policy period ends on August 1, 2005 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for an auto may not be combined with the limits for the same coverage on another auto, unless the policy contract allows the stacking of limits. The policy contract is form 1050 (11-94). The contract is modified by forms 1602 (08/83), 1857 (03/96), 6931 (04/89), 2012 (03/96), 8282 (04/84), 8470 (12/86), 4792A (01/03), 1197 (08/93), MC1632 (06/71), 9809 (04/96) and 8627 (03/88).

Outline of coverage

Description	Limits	Deductible	Premium
Liability To Others			\$8,363
Bodily Injury and Property Damage Liability	\$1,000,000 combined single limit		
Uninsured/Underinsured Motorist	\$25,000 each person/\$50,000 each accident		84
Uninsured Motorist Property Damage	\$25,000 each accident	\$250	44
Medical Payments	\$2,000 each accident		60
Comprehensive			461
See Schedule Of Covered Autos	Limit of liability less deductible		
Collision			2,168
See Schedule Of Covered Autos	Limit of liability less deductible		
Subtotal policy premium			\$11,180
Fees	······································		150
Total 12 month policy premium			\$11,330
Total 12 month poncy premium			

Rated drivers

- 1. JOHN PARKER
- 2. JILL PARKER



JMP ENTERPRISES, INC Page 2 of 2

Auto coverage schedule

	•	1992 Intl : VIN: 1HSH	810 BAZN7NH4431	814		Stated Amount: Garaging Zip Code:	\$25,000 30240	Radius:	100
Liability		Liability	UM/UIM BI	UM PD	Med Pay	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		****************	******
Premium		\$4,836	\$42	\$22	\$25				
Physical Damage		Comp Deductible	Comp Premium	Collision Deduαible	Collision Premium				Auto Total
Premium		\$1,000	\$242	\$1,000	\$1,092				\$6,259
2		NON Own VIN: NONE	ed Attached	d Trir *		Garaging Zip Code:	30240	Radius:	100
Liability		Liability	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	********	• • • • • • • • • • • • • • • • • • • •		,		Auto Total
Premium		\$1,107							\$1,107
. 3			F650 Supe W6540YMA03			Stated Amount: Garaging Zip Code:	\$28,000 30240	Radius:	100
Liability		Liability	UM/UIM BI	UM PD	Med Pay				
Premium		\$2,420	\$42	\$22	\$35				g
Physical Damage		Comp Deductible	Comp Premium	Collision Deductible	Collision Premium				Auto Total
Premium		\$1,000	\$219	\$1,000	\$1,076				\$3,814
									-

Document 29-6

Lienholder information

We will send certain notices such as coverage summaries and cancellation notices to the following:

1.	Lienholder	Auto 1	SUN TRUST	
			PO BOX 7031 PASADENA, CA 91109	
			1992 Intl 810 (1HSHBAZN7NH443814)	
2.	Lienholder		SUN TRUST	
			PO BOX 7031 PASADENA, CA 91109	
			2000 Ford F650 Super Duty (3FDNW6540YMA03102)	

^{*} Non-Owned trailer but only while attached to a listed power unit specifically described on the declarations page



Issued by:

COMMERCIAL VEHICLE DIVISION PO BOX 94739 CLEVELAND OH 44101-4739

LOSS PAYABLE CLAUSE

We agree with you to change your policy as follows:

- We will pay the loss payee named in the Policy for loss to your insured auto, as the interest of the loss payee may appear.
- The insurance covers the interest of the loss payee unless the loss results from fraudulent acts or omissions on your part.
- Cancellation ends this agreement as to the loss payee's interest. If we cancel the Policy we will mail you and the loss payee the same advance notice.
- If we make any payment to the loss payee, we will obtain his rights against any other party.

Vehicle 1 SUN TRUST	Vehicle 2		
Secured Party		Secured Party	
Address: PO BOX 7031	Address:	-	
PASADENA CA 91109			
Vehicle 3 SUN TRUST	Vehicle 4		
Secured Party		Secured Party	
Address: PO BOX 7031	Address:	occured r arry	
PASADENA GA 91109			
All other parts of this Policy remain unch	nanged.		
This endorsement changes Policy No. c	A 08263817-0		
Issued to: JMP ENTERPRISES, INC	2205 GREENVILLE ROAD	LAGRANGE	GA 30240
Name of Insured	Address	City/State	
Endorsement Effective: 08/01/04			
	ACO ·	C2	

Form No. L1602 (8-83)

AGENT'S COPY

CVSE0620961617L160201



Issued By: PROGRESSIVE PREFERRED INSURANCE CO.

AUTO DAMAGE LIMIT OF LIABILITY POLICY CHANGE

Document 29-6

We agree with you to change Part III, Damage to Your Auto, as follows: Limit of Liability

If the Limit of Liability shown below is less than 90% of the actual cash value at the time of loss to your insured auto, you will share with us in the cost of repair or replacement as follows:

- We will pay the same proportion of the loss which the Limit of Liability shown below bears to the actual cash value of your insured auto at the time of loss.
- We will reduce the amount of loss by the Auto Damage deductible shown in the Policy Declarations prior to 2. calculating the proportionate amount we will pay.

If we pay the actual cash value of the auto less deductible, we are entitled to all salvage.

Limits of Liability(Including	Custom Pai	ts & Equip.)
Loop Dadwallel		

No.	. Year	Trade Name	Serial No.	Liability	Comp/FTCAC Ded.	v Coll. Ded.
01 02	1992 2030	INTL NON OWN	1HSHBAZN7NH443814 NONE	25000 0	1000	1000
03	2000	FORD	3FDNW6540YMA03102	28000	1000	1000



All other parts of this Policy remain unchanged.

Issued to: JMP ENTERPRISES, INC

2205 GREENVILLE ROAD

LAGRANGE

GA 30240

This endorsement changes Policy No. CA 08263817-0

Endorsement Effective: 08/01/04

ACO C2

8470 (12-86)

AGENT'S COPY

CVSE0809021617L847001

08/16/04 09:56 FAX 440 516 5076

PROGRESSIVE

R OUT

Form E UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

Filed with the ALABAMA PUBLIC SERVICE COMMISSION (hereinafter called Commission) of PO BOX 304260, MONTGOMERY , AL 36130

This is to certify, that the PROGRESSIVE PREFERRED INSURANCE COMPANY (hereinafter called Company) of PO BOX 94739, CLEVELAND, OH 44101 has issued to JMP ENTERPRISES, INC of 2205 GREENVILLE ROAD, LAGRANGE, GA 30240 a policy or policies of insurance effective from 08/01/2004 12:01 A.M. standard time at the address of the insured stated in said policy or policies and continuing until cancelled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days notice in writing to the State Commission, such thirty (30) days notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at 6300 WILSON MILLS, MAYFIELD VILLAGE, OH 44143 this 11th day of August, 2004

Insurance Company File No. CA 08263817

(Policy Number)

MC1633a(08/99)

(Authorized Company Representative)

IRB3539B

UNIVERSITY AGCY INC PO BOX 3067 AUBURN, AL 36831



August 11, 2004 Policy number: CA 08263817-0

JMP ENTERPRISES, INC 2205 GREENVILLE ROAD LAGRANGE, GA 30240

Enclosed is the MCS90.

Please retain this copy for your records.

A copy of this endorsement has been sent to the insured at the above address.

Thank you, Commercial Auto State Permit Issuance and Verification

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Form Approved OM8 No. 2125-0074

Issued to JMP ENTERPRISES, INC of 2205 GREENVILLE ROAD, LAGRANGE, GA 30240 Dated at MAYFIELD VILLAGE, OH 44143 this 11th day of August, 2004 Amending Policy No. CA 08263817-0 Effective Date 08/01/2004 Name of Insurance Company PROGRESSIVE PREFERRED INSURANCE COMPANY Telephone Number

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to conditions which result in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

MOTOR VEHICLE means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

BODILY INJURY means injury to the body, sickness, or disease to any person, including death resulting from any of these.

ENVIRONMENTAL RESTORATION means restitution for the loss, damage or

destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from

liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately, to each accident, and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Motor Carrier Act of 1980 requires limits of financial responsibility according to the type of carriage and commodity transported by the motor carrier. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.

THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE.

The limits shown in the schedule are for information purposes only.

Form IACS-90

Page 1

MC 1622k (Ed. 10-99)

SCHEDULE OF LIMITS **Public Liability**

MC 1622k (cont'd)

	Type of Carriage	Commodity Transported	Minimum Insurance
(1)	For-hire (In interstate or foreign commerce).	Property (nonhazardous).	\$ 750,000
(2)	For-hire and Private (In interstate, foreign, or intrastate commerce).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hoppertype vehicles with capacities in excess of 3,500 water gallons; or in bulk Divisions 1.1, 1.2, and 1.3 materials; any quantity of Division 2.3 Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000
(3)	For-hire and Private (In interstate or foreign commerce: in any quantity) or (In interstate commerce: in bulk only).	Oil listed in 49 CFR 172.101; hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	1,000,000
(4)	For-hire and Private (In interstate or foreign commerce).	Any quantity of Division 1.1, 1.2 or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000

Note: The type of carriage listed under numbers (1), (2), and (3) applies to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

SCHEDULE OF LIMITS **Public Liability**

For-hire motor carriers of passengers operating in interstate or foreign commerce

Vehicle Seating Capacity	Minimum Insurance		
(1) Any vehicle with a seating capacity of 16 passengers or more.	\$ 5,000,000		
(2) Any vehicle with a seating capacity of 15 passengers or less.	1,500,000		

Page 2



AUGUST 12, 2004

UNIVERSITY AGCY INC PO BOX 3067 AUBURN, AL 36831

Re: Policy # CA 8263817-0

JMP ENTERPRISES, INC.
2205 GREENVILLE ROAD
LAGRANGE, GA 30240

Enclosed is a Form F.

This is to confirm that Form E filings have been made for the indicated state(s) with the effective date of 08/01/04.

Please forward the original Form F to the insured and use the other copies to update your files.

Thank You,

State Permit Issuance and Verification

Commercial Vehicle Division 1-800-444-4487

FORM F

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

Document 29-6

It is agreed that:

- 1. The Certification to the policy, by proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.
- 2. The Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance has been filed with the State Commissions indicated below.
- 3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such Commission.

	Attached	to and forming part of policy No	С	A 8263817-0			
lss	ued by	PROGRESSIVE PREFERRE	D INSURANCE	COMPANY			
Со	mpany, of	CLEVELAND, OH					
to	JMP	ENTERPRISES, INC.					
of _	LAG	RANGE, GA					
	Dated at	CLEVELAND, OH	,	this 11	day of _AUGUST	20 04	`
			Со	untersigned by		Muse	<u></u>
					Authorized	d Signature	

BODILY I	X - INI AJURY A	DICATES STATE COMMI	SIONS E LIAB	WITH WHOM UNIFORM MO	OTOR CARRIER URANCE HAS BEEN FILED
ALABAMA		ILLINOIS		MONTANA	RHODE ISLAND
ALASKA		INDIANA		NEBRASKA	SOUTH CAROLINA
ARIZONA		IOWA		NEVADA	SOUTH DAKOTA
ARKANSAS		KANSAS		NEW HAMPSHIRE	TENNESSEE
CALIFORNIA		KENTUCKY		NEW JERSEY	TEXAS
COLORADO		LOUISIANA		NEW MEXICO	UTAH
CONNECTICUT		MAINE		NEW YORK	VERMONT
DELAWARE		MARYLAND		NORTH CAROLINA	VIRGINIA
DISTRICT OF COLUMBIA		MASSACHUSETTS		NORTH DAKOTA	WASHINGTON
FLORIDA		MICHIGAN .		ОНІО	WEST VIRGINIA
GEORGIA	Х	MINNESOTA		OKLAHOMA	WISCONSIN
HAWAII		MISSISSIPPI		OREGON	WYOMING
IDAHO		MISSOURI		PENNSYLVANIA	ICC

MC1632 (8-99)

/03/2004 14:17 FAX 1440603455	JURESUI - E
FAX TRANSMITTAL	Date 9-3-04
· Gvette	Fax# 334-887-656 (
Address/Box# (1gent	Phone/Network#
From	Fax# 1-440-603-4555
PROGRESSIVE COMMERCIAL INSURANCE	Phone/Network#
P.O. Box 94739	
CLEVELAND, OH 44101	
# of Pages Transmitted (Including this page)	
Message AL For	n E for
JMP En	terprises the
	_
	PROGRESSIVE [®] Not what you'd expect from an insurance company. [™]

1-800-444-4487 for policy service or claims service, 24 hours a day.

09/03/2004 14:18 FAX 144060345

PROGRESSIVE

Ø1002/002

Form E UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

Filed with the ALABAMA PUBLIC SERVICE COMMISSION (hereinafter called Commission) of PO BOX 304260, MONTGOMERY, AL 36130

This is to certify, that the PROGRESSIVE SPECIALTY INSURANCE COMPANY (hereinafter called Company) of PO BOX 94739, CLEVELAND, OH 44101 has issued to JMP ENTERPRISES, INC of 2205 GREENVILLE ROAD, LAGRANGE, GA 30240 a policy or policies of insurance effective from 08/01/2004 12:01 A.M. standard time at the address of the insured stated in said policy or policies and continuing until cancelled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days notice in writing to the State Commission, such thirty (30) days notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at 6300 WILSON MILLS, MAYFIELD VILLAGE, OH 44143 this 3rd day of September, 2004

Insurance Company File No. CA 08263817

(Policy Number)

MC1633a(08/99)

(Authorized Company Representative)

IRB3539F

PROGRESSIVE®

UNIVERSITY AGCY INC PO BOX 3067 AUBURN, AL 36831

Named Insured:

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241



Policy number: 08263817-0

Progressive Preferred Insurance Company September 10, 2004 Policy Period: Aug 1, 2004 - Aug 1, 2005 Page 1 of 2

personal.progressive.com

Make payments, check billing activity or check status of a claim.

334-887-6569

UNIVERSITY AGCY INC

Contact your agent during business hours.

800-444-4487

For policy service and claims service, 24 hours a day, 7 days a week.

Commercial Auto Insurance Coverage Summary

This is your Declarations Page Your coverage has changed

Your coverage began the later of August 1, 2004 at 12:01 a.m. or at the time your application is executed on the first day of the policy period. This policy period ends on August 1, 2005 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for an auto may not be combined with the limits for the same coverage on another auto, unless the policy contract allows the stacking of limits. The policy contract is form 1050 (11-94). The contract is modified by forms 1602 (08/83), 1857 (03/96), 6931 (04/89), 2012 (03/96), 8282 (04/84), 8470 (12/86), 4792A (01/03), 1197 (08/93), MC1632 (06/71), 9809 (04/96) and 8627 (03/88).

The named insured organization type is a corporation.

Policy changes effective September 9, 2004

Premium change: \$0.00

Changes: The mailing address information has changed.

The changes shown above will not be effective prior to the time the changes were requested.

Outline of coverage

	Description	Limits	Deductible	Premium
	Liability To Others			\$8,363
	Bodily Injury and Property Damage Liability	\$1,000,000 combined single limit		
	Uninsured/Underinsured Motorist	\$25,000 each person/\$50,000 each accident		84
	Uninsured Motorist Property Damage	\$25,000 each accident	\$250	44
	Medical Payments	\$2,000 each accident		60
	Comprehensive			461
	See Schedule Of Covered Autos	Limit of liability less deductible		
	Collision			2,168
	See Schedule Of Covered Autos	Limit of liability less deductible		
	Subtotal policy premium			\$11,180
	Fees			150
	Total 12 month policy premium		• • • • • • • • • • • • • • • • • • • •	\$11,330
Rated d	rivers			
	1. JOHN PARKER			

Form 6489 (05/02)



Policy number: 08263817-0 JMP ENTERPRISES, INC Page 2 of 2

Auto coverage schedule

1.	1992 Inti VIN: 1HS	810 HBAZN7NH443	814		Stated Amount: Garaging Zip Code:	\$25,000 30240	Radius:	100
Liability	Liability	UM/UIM BI	UM PD	Med Pay				
Premium	\$4,836	\$42	\$22	\$25	***************************************			
Physical Damage	Comp Deductible	Comp Premium	Collision Deductible	Collision Premium				Auto Total
Premium	\$1,000	\$242	\$1,000	\$1,092				\$6,259
2.	NON Owr VIN: NON	ned Attached E	i Trir *		Garaging Zip Code:	30240	Radius;	100
Liability	Liability							Auto Total
Premium	\$1,107					*******************		\$1,107

ے .	2000	Ford F650 Super Duty	
	VIN:	3FDNW6540YMA03102	

Stated Amount: \$28,000 Garaging Zip Code: 30240

Radius: 100

Liability Premium

Premium

Physical Damage

Liability UM/UIM BI HM Pr \$2,420 \$42 \$22 Comp Deductible

Med Pay \$35

\$1,076

Comp Premium Collision Deductible Collision Premium \$219

\$1,000

Auto Total

Lienholder information

We will send certain notices such as coverage summaries and cancellation notices to the following:

Lienholder Auto 1 2. Lienholder Auto 3

\$1,000

PO BOX 7031 PASADENA, CA 91109

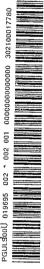
2000 Ford F650 Super Duty (3FDNW6540YMA03102) Charter

Bank

1-4-05 Made Marges

Charter Bank
P.O. Box 570
West Point, GA. 31833

Form 6489 (05/02)



\$3,814

 $^{^\}star$ Non-Owned trailer but only while attached to a listed power unit specifically described on the declarations page



Issued by:

COMMERCIAL VEHICLE DIVISION PO BOX 94739 CLEVELAND OH 44101-4739

LOSS PAYABLE CLAUSE

We agree with you to change your policy as follows:

- We will pay the loss payee named in the Policy for loss to your insured auto, as the interest of the loss payee may appear.
- The insurance covers the interest of the loss payee unless the loss results from fraudulent acts or omissions on your part.
- Cancellation ends this agreement as to the loss payee's interest. If we cancel the Policy we will mail you and the loss payee the same advance notice.
- If we make any payment to the loss payee, we will obtain his rights against any other party.

Vehicle 1 SUN TRUST		Vehicle 2		
Secured Party			Secured Party	
Address: PO BOX 7031		Address:		
PASADENA CA 91109				
Vehicle 3 SUN TRUST		Vehicle 4		
Secured Party			Secured Party	
Address: PO BOX 7031	,	Address:		
PASADENA CA 91109				
All other parts of this Policy remain unchar	nged.			
This endorsement changes Policy No. CA	08263817-0			
ssued to: JMP ENTERPRISES, INC	PO BOX 3501		LAGRANGE	GA 30241
Name of Insured	Address		City/State	
Endorsement Effective: 08/01/04				
	-	ACO (22	

Form No. L1602 (8-83)

AGENT'S COPY

CVSE0620961617L160201



Issued By: PROGRESSIVE PREFERRED INSURANCE CO.

AUTO DAMAGE LIMIT OF LIABILITY POLICY CHANGE

Document 29-6

We agree with you to change Part III, Damage to Your Auto, as follows:

Limit of Liability

No. Year Trade Name

INTL

FORD

NON OWN

01 1992

2000 03

02 2030

If the Limit of Liability shown below is less than 90% of the actual cash value at the time of loss to your insured auto, you will share with us in the cost of repair or replacement as follows:

- We will pay the same proportion of the loss which the Limit of Liability shown below bears to the actual cash value of your insured auto at the time of loss.
- We will reduce the amount of loss by the Auto Damage deductible shown in the Policy Declarations prior to calculating the proportionate amount we will pay.

If we pay the actual cash value of the auto less deductible, we are entitled to all salvage.

Limits of Liability(Including Custom Parts & Equip.)

Serial No.	Le Liability	SS Deductible Shown Belo Comp/FTCAC Ded.	Coll. Ded.
1HSHBAZN7NH443814 NONE	25000 0	1000	1000
3FDNW6540YMA03102	28000	1000	1000



All other parts of this Policy remain unchanged.

Issued to: JMP ENTERPRISES, INC

PO BOX 3501

LAGRANGE

GA 30241

This endorsement changes Policy No. CA 08263817-0

Endorsement Effective: 08/01/04

ACO C2

8470 (12-86)

AGENT'S COPY

CVSE0809021617L847001

water 8 200 of said winds of .

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241

Policy number: 08263817-0

Progressive Preferred Insurance Company May 20, 2005 Policy Period: Aug 1, 2004 - Aug 1, 2005 Page 1 of 1

personal.progressive.com

Make payments, check billing activity or check status of a claim.

800-999-8781

Automated Billing Inquiry

Make a credit card payment, check last payment received or due date of next payment.

334-887-6569

UNIVERSITY AGCY INC

Contact your agent during business hours.

800-444-4487

Policy Services

Call when your agent is not available to make policy changes 24 hours a day. 7 days a week. Se habia español.

You can make immediate payments by using a credit card or authorizing a withdrawal from your checking account. Simply go to personal.progressive.com or call us at 800-444-4487. Have your account number ready and your payment will be credited immediately.

Cancel Notice

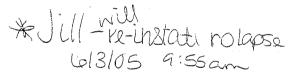
We have not received your payment

We have not received your payment. Your policy will be canceled at 12:01 a.m. on June 1, 2005 because you did not pay the required premium. To maintain continuous coverage, your payment must be received or postmarked by 12:01 a.m. on June 1, 2005. If you have already sent your payment - thank you.

Remaining balance	\$1,865.88
Payments remaining	0
Minimum amount due	\$1,865.88
Due date	June 1, 2005

Billing detail for April 18, 2005 - May 20, 2005

Payments received after May 20 will appear on your next statement, You can call Automated Billing Inquiry or check personal.progressive.com to make sure we received your payment.



Payment Coupon

Minimum amount due \$1,865.88 Due date June 1, 2005 Amount enclosed

To maintain continuous coverage, your payment must be received or postmarked by 12:01 a.m. on June 1, 2005.

PROGRESSIVE PO BOX 30108 TAMPA FL 33630-3108

Policy number: 08263817-0

Policy holder: JMP ENTERPRISES, INC

For immediate payment - to authorize a withdrawal from your checking account or make a credit card payment - go to personal.progressive.com or call 800-444-4487

If you pay by check, please allow 5 to 7 days for your payment to reach us by the due date.

Do not write below this section of coupon. Form 6268 (11,00)

310808263817010065 0186588 0186588 0000000 0000000 008708010403



Policy number: 08263817-0 May 27, 2005

Page 1 of 1

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241

Your policy was canceled

on June 1, 2005 at 12:01 a.m.

Although there is a balance due, you do not need to pay this amount because it has been waived. A summary of your billing detail follows.

If you have questions about this cancellation, please call Policy Services at 800-444-4487.

Policy premium for coverage until June 1, 2005	\$9,312.00
Installment fees	45.00
Late fees	5.00
Other fees	150.00
Total policy premium and fees	\$9,512.00
Total amount paid	-9,509.12
Total amount waived	\$2.88

It is important that you obtain insurance as soon as possible. To purchase a new Progressive policy or to see if you are eligible for commercial auto insurance, please call your agent at 334-887-6569.



Policy number: 08263817-0

June 3, 2005

Policy Period: Aug 1, 2004 - Aug 1, 2005

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241

Your policy has been reinstated

Thank you for your payment of \$1,865.88. We recently sent you a cancellation notice stating that your policy was canceled on June 1, 2005. We have now reinstated your policy, effective June 1, 2005. There was no lapse in your coverage.

If you have questions about this reinstatement, please call Policy Services at 800-444-4487.

Document 29-6

PROGRESSIVE®

UNIVERSITY AGCY INC PO BOX-3067 AUBURN, AL 36831

Named Insured:

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241

Policy number: 08263817-0

Progressive Preferred Insurance Company January 5, 2005 Policy Period: Aug 1, 2004 - Aug 1, 2005 Page 1 of 2

personal.progressive.com

Make payments, check billing activity or check status of a claim.

334-887-6569

UNIVERSITY AGCY INC

Contact your agent during business hours.

800-444-4487

For policy service and claims service, 24 hours a day, 7 days a week.

Commercial Auto Insurance Coverage Summary

This is your Declarations Page Your coverage has changed

Your coverage began the later of August 1, 2004 at 12:01 a.m. or at the time your application is executed on the first day of the policy period. This policy period ends on August 1, 2005 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for an auto may not be combined with the limits for the same coverage on another auto, unless the policy contract allows the stacking of limits. The policy contract is form 1050 (11-94). The contract is modified by forms 1602 (08/83), 1857 (03/96), 6931 (04/89), 2012 (03/96), 8282 (04/84), 8470 (12/86), 4792A (01/03), 1197 (08/93), MC1632 (06/71), 9809 (04/96) and 8627 (03/88).

The named insured organization type is a corporation.

Policy changes effective January 4, 2005

Premium change: \$0.00

Changes: The lienholder information on this policy has changed.

The changes shown above will not be effective prior to the time the changes were requested.

Outline of coverage

Form 6489 (05/02)

	Description	Limits	Deductible	Premium
	Liability To Others		***************************************	\$8,363
	Bodily Injury and Property Damage Liability	\$1,000,000 combined single limit		, -,
	Uninsured/Underinsured Motorist	\$25,000 each person/\$50,000 each accident		84
	Uninsured Motorist Property Damage	\$25,000 each accident	\$250	44
	Medical Payments	\$2,000 each accident	***************************************	60
	Comprehensive			461
	See Schedule Of Covered Autos	Limit of liability less deductible		
	Collision See Schedule Of Covered Autos	Limit of liability less deductible	***************************************	2,168
	Subtotal policy premium			\$11,180
	Fees	The second secon		150
	Total 12 month policy premium			\$11,330
Rated dr	rivers	15.8×		
	1. JOHN PARKER	1862, 4160		
	2. JILL PARKER	1.0		
		1.80 Jue 97		
		SI 1 Lidery		

Auto coverage schedule

	1.	1992 Intl VIN: 1HSH	810 BAZN7NH443	3814		Stated Amount: Garaging Zip Code:	\$25,000 30240	Radius:	100
Liability		Liability	UM/UIM BI	UM PD	Med Pay				
Premium		\$4,836	\$42	\$22	\$25			******************	
Physical Dama	ge	Comp Deductible	Comp Premium	Collision Deductible	Collision Premium				Auto Total
Premium		\$1,000	\$242	\$1,000	\$1,092				\$6,259
	2.	NON Owner	ed Attache	d Trlr *		Garaging Zip Code:	30240	Radius:	100
Liability		Liability							
Premium		\$1,107 -	• • • • • • • • • • • • • • • • • • • •		**************		• • • • • • • • • • • • • • • • • • • •		Auto Total
									\$1,107
	3.	2000 Ford VIN: 3FDNV	F650 Supe i V6540YMA03	r Duty 3102		Stated Amount: Garaging Zip Code:	\$28,000 30240	Radius:	001
Liability		Liability	UM/UIM BI	UM PD	Med Pay				10004
Premium		\$2,420	\$42	\$22	\$35				
Physical Damag	је	Comp Deductible	Comp Premium	Collision Deductible	Collision Premium				Auto Total \$3,814
Premium		\$1,000	\$219	\$1,000	\$1,076		********************		\$3,814
* Non-Owned trailer	but only	y while attached t	o a listed powe	r unit specifically	described on the	declarations name			001 00
Lienholder in			•	, .,,					002 00
			notices sus	h or covers		nd cancallation anti			02 * (

Document 29-6

We will send certain notices such as coverage summaries and cancellation notices to the following:

1.	Lienholder	Auto 1	CHARTER BANK	
			PO BOX 570 WEST POINT, GA 31833	
	*******************		1992 Inti 810 (1HSHBAZN7NH443814)	
. 2,	Lienholder	Auto-3	CHARTER BANK	
			PO BOX 570 WESTPOINT GA 31833	

2000 Ford F650 Super Duty (3FDNW6540YMA03102)



Issued by:

COMMERCIAL VEHICLE DIVISION PO BOX 94739 CLEVELAND OH 44101-4739

LOSS PAYABLE CLAUSE

We agree with you to change your policy as follows:

- We will pay the loss payee named in the Policy for loss to your insured auto, as the interest of the loss payee may appear.
- The insurance covers the interest of the loss payee unless the loss results from fraudulent acts or omissions on your part.
- 3. Cancellation ends this agreement as to the loss payee's interest. If we cancel the Policy we will mail you and the loss payee the same advance notice.
- If we make any payment to the loss payee, we will obtain his rights against any other party.

Vehicle 1 Charter bank		Vehicle 2		
Secured Party Address: PO BOX 570		Address:	Secured Party	-
WEST POINT GA 31833				
Vehicle 3 CHARTER BANK		Vehicle 4		
Secured Party Address: P0 B0X 570		Address:	Secured Party	100000000000000000000000000000000000000
WESTPOINT GA 31833		-		
All other parts of this Policy remain uncha	anged.			
This endorsement changes Policy No. ca	08263817-0			
Issued to: JMP ENTERPRISES, INC	PO BOX 3501		LAGRANGE	GA 30241
Name of Insured	Address		City/State	
Endorsement Effective: 08/01/04				
		ACO C	2	

Form No. L1602 (8-83)

AGENT'S COPY

CVSE0620961617L160201



Issued By: PROGRESSIVE PREFERRED INSURANCE CO.

AUTO DAMAGE LIMIT OF LIABILITY POLICY CHANGE

Document 29-6

We agree with you to change Part III, Damage to Your Auto, as follows:

Limit of Liability

No. Year

1992 2030 03 2000

If the Limit of Liability shown below is less than 90% of the actual cash value at the time of loss to your insured auto, you will share with us in the cost of repair or replacement as follows:

- We will pay the same proportion of the loss which the Limit of Liability shown below bears to the actual cash value of your insured auto at the time of loss.
- We will reduce the amount of ioss by the Auto Damage deductible shown in the Policy Declarations prior to calculating the proportionate amount we will pay.

If we pay the actual cash value of the auto less deductible, we are entitled to all salvage.

Limits of Liability(Including	Custom	Parts	& Equip.)
Less Deductible	Shown F	wolas	

Trade Name	Serial No.	Liability	Comp/FTCAC Ded.	Coll. Ded.
INTL NON OWN	1HSHBAZN7NH443814 NONE	25000 0	1000	1000
FORD	3FDNW6540YMA03102	28000	1000	1000

All other parts of this Policy remain unchanged.

Issued to: JMP ENTERPRISES, INC

PO BOX 3501

LAGRANGE

GA 30241

This endorsement changes Policy No. CA 08263817-0

Endorsement Effective: 08/01/04

ACO C2

8470 (12-86)

AGENT'S COPY

CVSE0809021617L847001

PROGRESSIVE®

UNIVERSITY AGCY INC PO BOX 3067 AUBURN, AL 3683 I

Named Insured:

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241

Policy number: 08263817-1

Progressive Preferred Insurance Company June 15, 2005 Policy Period: Aug 1, 2005 - Aug 1, 2006 Page 1 of 2

personal.progressive.com

Make payments, check billing activity or check status of a claim.

334-887-6569

UNIVERSITY AGCY INC
Contact your agent during business hours.

800-444-4487

For policy service and claims service, 24 hours a day, 7 days a week.

Commercial Auto Insurance Coverage Summary

This is your Renewal Declarations Page

This Renewal Declarations Page is effective only if the minimum amount due to renew your policy is received or postmarked by August 1, 2005.

Your coverage begins on August 1, 2005 at 12:01 a.m. This policy expires on August 1, 2006 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for an automay not be combined with the limits for the same coverage on another auto, unless the policy contract allows the stacking of limits. The policy contract is form 1050 (05/04). The contract is modified by forms 1602 (08/83), 1857 (03/96), 2012 (05/04), 4792A (01/03), MC1632 (06/71), 9809 (04/96) and 8627 (03/04).

The named insured organization type is a corporation.

Outline of coverage

Description	Limits	Deductible	Premium
Liability To Others			\$6,717
Bodily Injury and Property Damage Liability	\$1,000,000 combined single limit		
Uninsured/Underinsured Motorist	\$25,000 each person/\$50,000 each accident		84
Uninsured Motorist Property Damage	\$25,000 each accident	\$250	44
Medical Payments	\$2,000 each accident		59
Comprehensive			457
See Schedule Of Covered Autos	Limit of liability less deductible		
Collisian			1,753
See Schedule Of Covered Autos	Limit of liability less deductible		
Subtotal policy premium			\$9,114
Fees			75
Total 12 month policy premium			\$9,189

Rated drivers

1. JOHN PARKER

2. JILL PARKER

Send

Rehewal

y male sure filings dure

V 33 33

Continued

Porm 6489 (04, (05/02)

E-COPY

Policy number: 08263817-1 JMP ENTERPRISES, INC. Page 2 of 2

Auto coverage schedule

	1.	1992 Intl VIN: 1HSF	810 HBAZN7NH443	814		Stated Amount: Garaging Zip Code:	\$25,000 30240	Radius:	100
Liability		Liability	им/иім ві	UM PD	Med Pay				
Premium		\$3,838	\$42	\$22	\$25				
Physical Damag	je	Comp Deductible	Camp Premium	Collision Deductible	Callision Premium				Auto Total
Premium		\$1,000	\$240	\$1,000	\$865				\$5,032
Liability	2.	NON Owr VIN: NON	ned Attached E	t Tr i r *		Garaging Zip Code:	30240	Radius:	100 Auto Tatal
Premium		\$876							\$876
	3.		i F650 Supe r IW6540YMA03	-		Stated Amount: Garaging Zip Code:	\$28,000 30240	Radius:	100
Liability		Liability	UM/UIM BI	UM PD	Med Pay				
Premium		\$2,003	\$42	\$22	\$34				
Physical Damag	je	Comp Deductible	Comp Premium	Collision Deductible	Callision Premium				Auto Total
Premium		\$1,000	\$217	\$1,000	\$888				\$3,206

^{*} Non-Owned trailer but only while attached to a listed power unit specifically described on the declarations page

Premium discount

Policy 08263817-1 Renewal

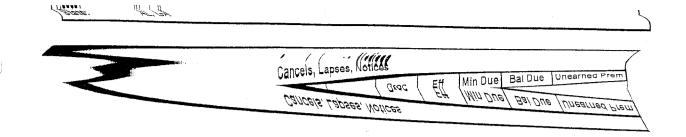
Lienholder information

We will send certain notices such as coverage summaries and cancellation notices to the following:

1.	Lienholder	Auto 1	CHARTER BANK PO BOX 570 WEST POINT, GA 31833 1992 Intl 810 (1HSHBAZN7NH443814)
2 .	Lienholder	Auto 3	CHARTER BANK PO BOX 570 WESTPOINT, GA 31833 2000 Ford F650 Super Duty (3FDNW6540YMA03102)

Form 6489 GA (05/02)





	Cancels, Lapses, Notices											
Insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Min Due	Bal Due	Unearned Prem		
Cannon, Willie 02243445-4	334-749-8550	Commercial Auto	AL	28270	Lapse	08/02/05	08/01/05	\$0.00	\$0.00			
Jmp Enterprises; Inc 08263817-1	706-881-5301	Commercial Auto	GA	28270	Lapse	08/02/05	08/01/05	\$0.00	\$0.00			
Struck, Torsten 41857571-3	h: 334-444-1504	Auto	AL	28270	Final Cancel	08/02/05	08/12/05	\$0.00	(\$165.00)	\$165.00		

		New B	usin	ess, Re	newals, Quotes				
insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Total Premium	PIF
Bonds, Kimberly J 45004935-3	h: 334-821-0258	Motor Home	AL.	28270	Renewal Payment Received	08/02/05	08/26/05	\$1,634.00	ē
Hollis, Daniel W 36093237-7	h: 3f - 7393	Auto	AL	28270	Renewal Payment Received	08/02/05	08/02/05	\$586.00	
Jackson, Brenda 41634501-4	h: 706	100	/	28270	Renewal Payment Received	08/02/05	08/02/05	\$981.00	
Jackson, Reta 36748715-5	594	1 65	, ,,	.70	Renewed	08/02/05	07/30/05	\$1,758.00	
Johnson, Robert C 04356516-9	1762		3	<i>s</i> 270	Renewal Quote	08/02/05	08/30/05	\$369.00	
Moore, Erica R 55024262-6	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	62	(/ √	28270	Renewal Payment Received	08/02/05	08/28/05	\$639.00	
Morgan, Jerry M 38286335-3	h: 205-229- w: 205-714-1372	. Su	: ۱۲	28270	Renewal Payment Received	08/02/05	08/12/05	\$344.00	
Ragland, Frank 38332028-3	w: 334-821-8336	Auto	λL	28270	Renewal Quote	08/02/05		\$1,269.00	

		P	olicy	-)	(346)
Insured Name	Phone	Prod	ST	-						
				1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	general de la companya de la company	en arrivalla	7	Mary and	(R)	ماندروه الفاقة عندسوه مانع مان
		No 'Po	licy C	TD	111	7 7	7			

- Certified technicians
 Fast, FREE mobile service
- National lifetime warranty
 Insurance paperwork handled

insured Name	Phone	P
Bonds, Kimberly J 45004935-3	h: 334-821-0258	Moto
Hollis, Daniel W 36093237-7	h: 334-502-7393	۵
Jackson, Brenda 41634501-4	h: 334-501-7186	Δ
Johnson, Recal 25206041-7	h: 334-741-8572 w: 334-821-7185	Α
Komara, Kelly 38705096-1	h: 334-707-1350	Δ
Moore, Erica R	h: 334-444-3594	Д

https://www1.foragentsonly.com/cpf/

35	Get it fixed.	Get it fast.	Get back on track.
,			

100x to call 121097	
going to call Prog 7	

Page 1 of 3

Report Printed: 8/8/2005 9:05:56 AM

Document 29-6

Processed Date: 08/05/2005 to 08/07/2005

Product:

Auto, Boat, Commercial Auto, Motorcycle, Motor Home, Travel Trailer

Agent: State: 28270 . AL, GA

			Ca	anceis, L	apses, No	tices				
Insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Min Due	Bal Due	Unearned Prem
Jmp Enterprises, Inc 08263817-1	706-881-5301	Commercial Auto	GA	28270	Cancel Rescind	08/05/05	08/05/05			
Kornegay, Mark 38748352-0	h: 334-741-7364	Auto	AL	28270	Initial Cancel	08/07/05	08/08/05		} 	
Marshall, Thomas E 32430860-1	h: 334-741-9034	Boat	AL	28270	Lapse	08/05/05	08/05/05	\$51.25	\$391.00	***************************************
Morehouse, Chris 38523140-2	h: 334-742-0952	Auto	AL	28270	Cancel Sent	08/07/05	08/20/05	\$468.15	\$2,300.74	
	h: 334-749-0634 w: 334-821-8336	Motorcycle	AL	28270	Lapse	08/07/05	08/07/05	\$201.00	\$201.00	San enter entre (men engen en en en engen egy en engen en en

		- 7	New Bus	ines	s, Rene	wals, Quotes			·····	
Insured Name	Phone	Ą	Prod	ST	Agent	Trans	Proc	Eff	Total Premium	PIF
Anderson, Marty . 38715648-1	h: 334-524-4132		Auto	AL	28270	Renewal Quote	08/05/05	09/01/05	\$1,008.00	\$836.00
Henderson, Julian T 40137925-5	h: 334-826-7796		Motor Home	AL	28270	Renewal Quote	08/07/05	09/14/05	\$333,00	<u>.</u>
Johnston, William P 40276565-3	w: 334-887-7007	in it	Motorcycle	AL	28270	Renewal Payment Received	08/07/05	08/14/05	\$864.00	
Marshall, Thomas E 32430860-1	h: 334-741-9034		Boat	AL	28270	Renewal Payment Received	08/07/05	08/05/05	\$0.00	
Oʻneil, Katelyn 38695941-1	h: 334-702-1423		Auto	AL	28270	Renewal Payment Received	08/07/05	08/08/05	\$957.00	arrigings also be about a second of
Park, Jason 38318985-3	h: 334-663-3641	- day, began ch	Auto	AL	28270	Renewal Quote	08/05/05	08/20/05	\$946.00	\$851,00
Parker, John M 38555408-1	h: 706-881-5301	To the same of	Auto	GΑ	28270	Renewed	08/05/05	08/04/05	\$1,442.00	
Ridenour, Kim 38338823-3	h: 334-466-8223	2	Auto	AL	28270	Renewal Quote	08/05/05	09/01/05	\$550.00	\$494.00
Willeford, Linda 37290541-2	h: 334-749-9623	- dent	Motor Home	AL	28270	Renewal Payment Received	08/05/05	08/13/05	\$448.00	,,
Willeford, Linda 37290541-2	h: 334-749-9623	47	Motor Home	AL	28270	Renewed	08/07/05	08/13/05	\$412.00	
Williams, Dwight 38090684-8	w. 334-749-8234	}	Auto	AL	28270	Renewed	08/07/05	08/18/05	\$1,517.00	
Williams, Dwight 38090684-8	w. 334-749-8234		Auto	AL	28270	Renewal Payment Received	08/05/05	08/18/05	\$1,517.00	greg en concesso d'Agr _a a a Sa
Williams, Shari M 41468140-7	h: 334-214-0395		Auto	AL	28270	Renewal Payment Received	08/05/05	08/08/05	\$830.00	
Williams, Shari M 41468140-7	h: 334-214-0395		Auto	AL	28270	Renewed	08/07/05	08/08/05	\$830.00	y -2-44
Williford, Amanda 38714926-1	h: 334-704-0843 w: 334-740-1915		Auto	AL	28270	Renewal Quote	08/07/05	09/02/05	\$699.00	\$630.00

					Policy Ch	anges			
insured Name	Phone	Prod	ST	Agent	Proc	Eff	Conf. Number	initiated By	Net Change

https://www1.foragentsonly.com/cpf/PrintFriendly.asp?type=all&subtype=critical,new,end,... 8/8/2005



Filed 07/10/2007

August 6, 2005 Policy number: CA 08263817-1

JMP ENTERPRISES, INC 2205 GREENVILLE ROAD LAGRANGE, GA 30240

Enclosed is the Form F.

Please retain this copy for your records.

A copy of this endorsement has been sent to the insured at the above address.

Thank you, Commercial Auto State Permit Issuance and Verification 800-444-4487

FORM F

Document 29-6

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

It is agreed that:

- 1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.
- 2. The Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance has been filed with the State Commissions indicated below.
- 3. This endorsement may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days notice to commence to run from the date the notice is actually received in the office of such Commission.

Attached to and forming part of policy No. <u>CA 08263817-1</u> issued by <u>PROGRESSIVE PREFERRED INSURANCE CO.</u>, herein called Company, of <u>PO BOX 94739</u>, <u>CLEVELAND</u>, <u>OH 44101</u> to <u>JMP ENTERPRISES</u>, <u>INC</u> of <u>2205 GREENVILLE ROAD</u>, <u>LAGRANGE</u>, <u>GA 30240</u>

Dated at MAYFIELD VILLAGE, OH 44143	this 6 th	day c	of August, 2005
-------------------------------------	-----------	-------	-----------------

Countersigned by 500 Mauly

Authorized Representative

			WITH WHOM UNIFORM MOTO ABILITY CERTIFICATE OF INSUR	
ALABAMA	Х	ILLINOIS	MONTANA	RHODE ISLAND
ALASKA		INDIANA	NEBRASKA	SOUTH CAROLINA
ARIZONA		IOWA	NEVADA	SOUTH DAKOTA
ARKANSAS		KANSAS	NEW HAMPSHIRE	TENNESSEE
CALIFORNIA		KENTUCKY	NEW JERSEY	TEXAS
COLORADO		LOUISIANA	NEW MEXICO	UTAH
CONNECTICUT		MAINE	NEW YORK	VERMONT
DELAWARE		MARYLAND	NORTH CAROLINA	VIRGINIA
DISTRICT OF COLUMBIA		MASSACHUSETTS	NORTH DAKOTA	WASHINGTON
FLORIDA		MICHIGAN	оню	WEST VIRGINIA
GEORGIA	Х	MINNESOTA	OKLAHOMA	WISCONSIN
HAWAII		MISSISSIPPI	OREGON	WYOMING
IDAHO		MISSOURI	PENNSYLVANIA	

MC1632 (Ed. 06-04)

IRB 3538 A

AUBURN, AL 36831

PO BOX 3067

Case 3:06-cv-00934-WKW-TFM



August 6, 2005 Policy number: CA 08263817-1

JMP ENTERPRISES, INC 2205 GREENVILLE ROAD LAGRANGE, GA 30240

Enclosed is the MCS90.

Please retain this copy for your records.

A copy of this endorsement has been sent to the insured at the above address.

Thank you, Commercial Auto State Permit Issuance and Verification 800-444-4487

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Document 29-6

Form Approved OMB No. 2125-0074

Issued to JMP ENTERPRISES, INC of 2205 GREENVILLE ROAD, LAGRANGE, GA 30240 Dated at MAYFIELD VILLAGE, OH 44143 this 6th day of August, 2005 Amending Policy No. CA 08263817-1 Effective Date 08/05/2005 Name of insurance Company PROGRESSIVE PREFERRED INSURANCE CO Telephone Number 800-444-4487

Authorized Company Representative The policy to which this endorsement is attached provides primary or excess insurance as indicated by 📉 for the limits shown: This insurance is primary and the company shall not be liable for amounts in excess of \$1,000.000 for each accident. \square This insurance is excess and the company shall not be liable for amounts in excess of \$ — for each accident. in excess of the underlying limit of \$____ - for each accident

Whenever required by the Federal Highway Administration (FHWA) or the Interstate Commerce Commission (ICC), the company agrees to furnish the FHWA or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FHWA or the ICC, to verify that the policy is in

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to conditions which result in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

MOTOR VEHICLE means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

BODILY INJURY means injury to the body, sickness, or disease to any person, including death resulting from any of these.

ENVIRONMENTAL RESTORATION means restitution for the loss, damage or

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from

destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury, property damage, and environmental restoration.

liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately, to each accident, and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Motor Carrier Act of 1980 requires limits of financial responsibility according to the type of carriage and commodity transported by the motor carrier. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility. THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE

The limits shown in the schedule are for information purposes only.

Form MC5-90

Page 1

MC 1522k (Ed. 10-99)

SCHEDULE OF LIMITS **Public Liability**

MC 1622k (contd)

	Type of Carriage	Commodity Transported	Minimum Insurance
(1)	For-hire (In interstate or foreign commerce).	Property (nonhażardous).	\$ 750,000
(2)	For-hire and Private (In interstate, foreign, or intrastate commerce).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hoppertype vehicles with capacities in excess of 3,500 water gallons; or in bulk Divisions 1.1, 1.2, and 1.3 materials; any quantity of Division 2.3 Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000
(3)	For-hire and Private (In interstate or foreign commerce: in any quantity) or (In interstate commerce: in bulk only).	Oil listed in 49 CFR 172.101; hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	1,000,000
(4)	For-hire and Private (In interstate or foreign commerce).	Any quantity of Division 1.1, 1.2 or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000

Note: The type of carriage listed under numbers (1), (2), and (3) applies to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

SCHEDULE OF LIMITS **Public Liability**

For-hire motor carriers of passengers operating in interstate or foreign commerce

	Vehicle Seating Capacity	Minimum Insurance
(1)	Any vehicle with a seating capacity of 16 passengers or more.	\$ 5,000,000
(2)	Any vehicle with a seating capacity of 15 passengers or less.	1,500,000

Page 1 of 2

Report Printed: 9/8/2005 9:05:57

Processed Date: 09/07/2005 to 09/07/2005

Product:

Auto, Boat, Commercial Auto, Motorcycle, Motor Home, Travel Trailer

Agent:

28270 State:

Cancels, Lapses, Notices											
Insured Name	Phone	Prod	ST Age	nt Trans	Proc	Eff	Min Due	Bal Due	Unearned Prem		
Heptinstall, Joshua 38618103-1	h: 334-524-0961	Auto	AL 2827	70 : Final Cancel	09/07/05	08/29/05	\$72.99	\$72.99	\$168.00		
Jmp Enterprises, Inc 08263817-1	706-881-5301	Commercial Auto	GA 2827	O Cancel Sent	09/07/05	09/19/05	\$916.40	\$8,207.60	WUL -		

	New Business, Renewals, Quotes											
Insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Total Premium	PIF			
Reetz, James 38836810-0	h: 334-887-1084 w: 334-707-1354	Auto	AL	28270	New Business	09/07/05	09/07/05	\$440.00				
Superior Pools Inc 01891698-3	334-448-3877	Commercial Auto	AL	28270	Renewal Quote	09/07/05	10/10/05	\$2,543.00	\$2,420.00			
Williams, Kristen C 42027546-7	h: 334-501-5392	Auto	AL	28270	Renewal Payment Received	09/07/05	09/11/05	\$1,864.00	Santagen egan og en som en			
Woolbright, Jonas 38603879-2	h: 334-826-5785	Auto	AL	28270	Renewal Quote	09/07/05	10/01/05	\$196.00	\$178.00			

					Policy Cha	inges			
insured Name	Phone	Prod	ST	Agent	Proc	Eff	Conf. Number	Initiated By	Net Change
	h: 256-287-0712 w: 256-287-0712		AL	28270	09/07/05	09/09/05	250WC8708	Insured mail/fax	\$140.00
	Detail:						06/2005 effective on ling address informa		
Oʻneil, Katelyn 38695941-1	h: 334-702-1423	Auto	AL.	28270	09/07/05	09/07/05	250NET941	Agent FAO	\$0.00
		09/07/20	005: Ti		for your 1999		09/07/2005 at 05:1 New Beetle Gls has		

	Payments and Adjustments													
Insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Adj Type	Amount					
Kunkel, Elizabeth K 38457982-2	h: 334-734-0028	: Auto	AL	28270	Payment	09/07/05	09/02/05	•	(\$102.00)					
Lashley, Amanda 38607168-1	h: 334-749-5939	Auto	AL	28270	Payment	09/07/05	08/31/05	Albert Carlo (version) of a	(\$50.49)					
O'neil, Katelyn 38695941-1	h: 334-702-1423	Auto	AL	28270	Payment	09/07/05	09/07/05		(\$148.70)					
Reetz, James 38836810-0	h: 334-887-1084 w: 334-707-1354	Auto	AL	28270	Payment	09/07/05	09/07/05		(\$440.00)					
Treadwell, Jennifer 36437208-8	h: 334-745-3477	Auto	AL	28270	Adjustment	09/07/05	09/07/05	Service Fee	\$5.00					
Williams, Kristen C 42027546-7	h: 334-501-5392	Auto	AL	28270	Payment	09/07/05	09/02/05		(\$1,679.00)					
Williams, Kristen C 42027546-7	h: 334-501-5392	Auto	AL	28270	Adjustment	09/07/05	09/07/05	Adjustment	(\$5.00)					

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Page 1 of 2

Report Printed: 9/19/2005 9:37:56

Processed Date: 09/18/2005 to 09/18/2005

Bradusti Auto Root Communicial A

Agent:

Auto, Boat, Commercial Auto, Motorcycle, Motor Home, Travel Traile 28270

Agent: 28270 State: AL, GA

Cancels, Lapses, Notices Insured Name Phone Prod ST Agent Min Due Bal Due Unearned Prem Trans Proc Jmp Enterprises, Inc. 706-881-5301 Commercial GA 28270 Cancel 09/18/05 (09/19/05 08263817-1 Auto Effective

Detail:

New Business, Renewals, Quotes Total PIF Proc Fff Insured Name Phone Prod ST Agent Trans Premium Anderson, Marty 38715648-1 Auto AL 28270 \$836.00 h: 334-524-4132 09/18/05 :09/17/05 Renewed Aung, Hein 39081866-8 h: 334-821-4216 Auto AL 28270 09/18/05 09/17/05 \$215.00 Renewed Auto AL 28270 Renewal Payment 09/18/05 09/15/05 h: 334-663-5830 Haque, Anwarui w: 305-348-2694 41460793-7 Received 09/18/05 09/16/05 \$607.00 h: 334-887-0590 Auto AL 28270 Hua, Thi Hahn Renewed 40448922-8 09/18/05 09/17/05 \$923.00 Kleypas, Kyle h: 334-319-1832 Auto AL 28270 Renewal Payment 38593937-2 Received \$178.00 Woolbright, Jonas h: 334-826-5785 Auto AL 28270 Renewed 09/18/05 10/01/05 38603879-2

		Po	licy C	hanges					
Insured Name	Phone	Prod	ST	Agent	Proc	Eff	Conf. Number	Initiated By	Net Change Premium

		Paymer	nts a	nd Adju	stments		_		
Insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Adj Type	Amount
Coon, Brian J 32613616-0	h: 334-663-2624 w: 334-279-0726	Motorcycle	, AL	28270	Payment	09/18/05	09/18/05		(\$30.58)
Hamby Salvage Inc. 04726961-4	334-576-3727	Commercial Auto	AL	28270	Adjustment	09/18/05	09/18/05	Service Fee	\$5.00
Haque, Anwarul 41460793-7	h: 334-663-5830 w: 305-348-2694	Auto	AL	28270	Payment	09/18/05	09/17/05		(\$866.00)
Howard, Jonathan 35994730-8	h: 334-741-8618 w: 334-745-6271	Auto	AL	28270	Adjustment	09/18/05	09/18/05	Service Fee	\$5.00
Kim, Sung H 38445972-2	h: 404-513-1068	Auto	AL	28270	Payment	09/18/05	09/14/05		(\$283.98)
Kleypas, Kyle 38593937-2	h: 334-319-1832	Auto	AL	28270	Payment	09/18/05	09/17/05		(\$154.87)
Renegar, Linda 38742574-0	h: 334-887-7506 w: 334-844-2296	Auto	AL	28270	Payment	09/18/05	09/17/05		(\$125.65)
Rieves, Lashonda 41746372-4	h: 334-286-9773 w: 334-954-2833	Auto	AL	28270	Payment	09/18/05	09/17/05		(\$140.83)
Waldon, Jerry 41621781-4	h: 334-741-0906 w: 334-745-7308	Auto	AL	28270	Payment	09/18/05	09/18/05		(\$85.00)

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Page I of 1

Report Printed: 9/21/2005 9:03:41 AM

Processed Date: 09/20/2005 to 09/20/2005

Product:

Auto, Boat, Commercial Auto, Motorcycle, Motor Home, Travel Trailer

Agent: State:

28270 AL, GA

	Cancels, Lapses, Notices											
Insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Min Due	Bal Due	Unearned	Prem	
Community Credit Counse 04129802-7	888-704-0100	Commercial Auto	AL ,	28270	Cancel Sent	09/20/05	10/02/05		\$257.80			
	Detail:											
Jmp.Enterprises, Inc 08263817-1	706-881-5301	Commercial Auto	GA 2	28270	Cancel. Rescind	09/20/05	09/19/05			,		
	Detail:		***********	************		** *************		-				

New Business, Renewals, Quotes											
insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Total Premium	PIF		
Renegar, Linda 38742574-1	h: 334-887-7506 w: 334-844-2296	Auto	AL	28270	Renewal Quote	09/20/05	10/17/05	\$949.00	\$831.00		

					Policy Chan	ges			
Insured Name	Phone	Prod	ST	Agent	Proc	Eff	Conf. Number	Initiated By	Net Change
Howard, Jonathan 35994730-8	h: 334-741-8618 w: 334-745-6271		AL	28270	09/20/05	09/20/05	263NET730	Agent FAO	\$172.00
	Detail:	Change 09/20/20	s were	requeste he 1998 H	d by PATSY londa Accord	COAN on 09/2 EX 4D has be	20/2005 at 06:15 p.i een added.	m. EST, effective	э oп

Payments and Adjustments									
Insured Name	Phone	Prod	ST	Agent	Trans	Proc	Eff	Adj Type	Amount
Coon, Brian 41799082-4	h: 334-826-2568	Auto	AL	28270	Adjustment	09/20/05	09/20/05	Adjustment	(\$5.00)
Jacobs, Amy 38321331-3	h: 334-737-3779	Auto	AL	28270	Payment	09/20/05	09/20/05		(\$97.17)
Jmp Enterprises, Inc 08263817-1	706-881-5301	Commercial Auto	GA	28270	Adjustment	09/20/05	09/20/05	Service Fee	\$5.00
Mayfield, Marshall 55115440-3	h: 334-319-0867	Motorcycle	AL	28270	Adjustment	09/20/05	09/20/05	Service Fee	\$5.00
Moss, Larry A 36026371-7	h: 334-727-4838	Auto	AL	28270	Adjustment	09/20/05	09/20/05	Service Fee	\$5.00
Thompson Exteriors, Inc 08612870-0	678-283-6966	Commercial Auto	AL	28270	Adjustment	09/20/05	09/20/05	Late Fee	\$5.00
Thompson, Thomas 38797600-0	h: 334-663-6662	Auto	AL	28270	Adjustment	09/20/05	09/20/05	Service Fee	\$5.00

Underwriting Memos								
Insured Name	Phone	Prod	ST	Agent	Memo Date	Addressee	Reply Due	Subject
No "Underwriting Memos" found								

https://www1.foragentsonly.com/cpf/PrintFriendly.asp?type=all&subtype=critical,new,end...~~9/21/2005

Progressive Insurance

Page 1 of 1

UNIVERSITY AGCY INC PO BOX 3067 AUBURN, AL 36831



Policy number: 08263817-1 Underwitten by: Progressive Preferred Insurance Co. November 3, 2005

JMP ENTERPRISES, INC PO BOX 3501 LAGRANGE, GA 30241

Confirmation of policy cancellation

on October 19, 2005 at 12:01 a.m.

The amount you owe us for coverage provided prior to the cancellation is past due. A summary of the amount due follows. Please pay this amount to avoid further collection actions.

Total policy premium and fees	\$1,970.00
Total amount paid	-1,902.80
Total amount due	\$67.20
Due date	Immediately

If you have questions, please call Policy Services at 800-444-4487.

Payment Coupon

Total amount due	\$67.20
Due date	immediately
Amount enclosed	\$

Policy number: 08253817-1 Policy holder: JMP ENTERPRISES, INC

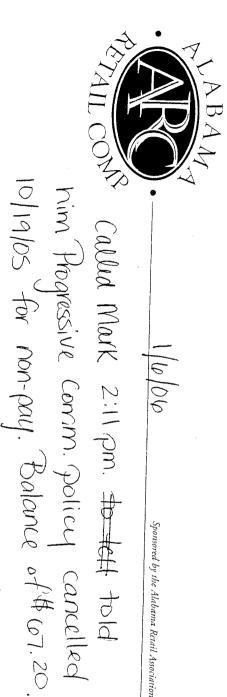
For immediate payment - to authorize a with drawal from your checking account or make a credit card payment - go to personal progressive.com or call 800-444-4487.

Do not write below this section of coupon 00-28270 Form 6269 (03/03) Balance Due After Cancellation

310808263817110063 0006720 0006720 5200019 3081867 008708050508

BOODDOWN I told Mark there is No coverage

as of 10/19/05.



Sponsored by the Alabama Retail Association

Picks back up. Per Mark don't warm about. He's going to Wait a month or so with he's business

For Underwriting Call 1-888-327-1915 or Fax ACORD to 334-263-0665

0047

EXHIBIT F:

SECOND REQUEST FOR PRODUCTION TO PROGRESSIVE

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

Document 29-7

PROGRESSIVE PREFERRED **INSURANCE COMPANY** Plaintiff

VS.

CASE NO. 3:06-CV-00934

JMP ENTERPRISES, INC.; JOHN MARK PARKER: and JENNIFER M. GOLDEN Defendants

GOLDEN'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO PROGRESSIVE

INSTRUCTIONS FOR USE: You are hereby requested to produce the documents listed below for inspection and copying at the offices of HOWARD, DUNN, HOWARD & HOWARD located at 102 South Boundary Street, Wetumpka, Alabama 36092, within the time allowed by law. The documents produced shall be grouped or numbered in accordance with the item numbers listed below. You are further requested to file a written response to this request for production of documents indicating, with respect to each numbered item or category, whether any such documents exist and whether such documents are being produced.

Definitions: The "state court action" refers to that action filed by Jennifer Golden in the Circuit Court of Lee County, Alabama, on or about February 14, 2006, being case number CV-2006-106.

- 5. The Return Receipt Card for the letter dated April 26, 2006, from Jerry Knight to JMP Enterprises, Inc., which letter was attached to the defendants' Response to the Plaintiff's First Request for Production.
- 6. Any and all tape recordings of voice mail messages that you left for John Mark Parker or JMP Enterprises, Inc.



Filed 07/10/2007

7. Forms 1602 (08/83), 1857 (03/96), 6931 (04/89), 2012 (03/96), 8282 (04/84), 8470 (12/86), 4792A (01/03), 1197 (08/93), MC1632 (06/71), 9809 (04/96) and 8627 (03/88), which are listed on the Declaration's Page of Exhibit B to the Complaint, which was filed on February 14. 2007.

HOWARD, DUNN, HOWARD & HOWARD

Attorney for Jennifer M. Golden

G. Houston Howard II

Of Counsel:

G. Houston Howard II (HOW015)

Howard, Dunn, Howard & Howard P.O. Box 1148

Wetumpka, Alabama 36092

Telephone: 334-567-4356 Facsimile: 334-567-7080

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

counsel of record, by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the 27 day of May, 2007.

EXHIBIT G:

PROGRESSIVE'S RESPONSE TO SECOND REQUEST FOR PRODUCTION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED)
INSURANCE COMPANY,	
Plaintiff,)
V.) Civil Action Number: 3:06-CV-00934
JMP ENTERPRISES, INC.;)
JOHN MARK PARKER; and)
JENNIFER M. GOLDEN,)
)
Defendants.	

OBJECTIONS AND RESPONSES TO JENNIFER GOLDEN'S SECOND REQUEST FOR PRODUCTION BY PLAINTIFF, PROGRESSIVE PREFERRED INSURANCE COMPANY ("PROGRESSIVE")

Comes now the defendant, Progressive Preferred Insurance Company ("Progressive"), pursuant to Rule 34 of the Federal Rules of Civil Procedure, and objects to Jennifer Golden's second request for production of documents as follows:

GENERAL OBJECTIONS

- 1. Progressive objects to any and all requests for production to the extent that they are vague, overly broad, unduly burdensome, harassing and/or not calculated to lead to the discovery of relevant or admissible evidence.
- 2. Progressive objects to any and all requests for production to the extent that they seek information protected from discovery by any privilege, including the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or immunity.

0001



3. Progressive objects to any and all requests for production to the extent that they seek confidential, financial, or proprietary business information.

Document 29-8

- 4. Progressive objects to any requests for production which are not reasonably limited in time and/or scope.
- 5. Progressive objects to any and all requests for production to the extent that they contain certain key terms which are not defined or that are unreasonably compound, disjunctive, or conjunctive.

These "General Objections" are applicable to and incorporated into each of the plaintiff's responses as if specifically stated therein. The stating of specific objections to a particular request shall not be construed as a waiver of the plaintiff's "General Objections." Unless otherwise specifically stated, Progressive's objections to each request for production apply to the entire request, including each and every subsection and/or subpart of the request.

SPECIFIC OBJECTIONS AND RESPONSES

- 5. Progressive is attaching the return receipt card for the correspondence dated April 26, 2006 to JMP Enterprises, Inc. ("JMP").
 - 6. Progressive does not possess any tape recordings of voice mail messages.
- Progressive is attaching the requested forms which are listed on the 7. declarations page of JMP's policy issued by Progressive.

R. Larry Bradford, Attornev for Plai Progressive Preferred Insurance Company Attorney Bar Code: BRA039

Share 1. Sears, Attorney for Plaintiff, Progressive Preferred Insurance Company Attorney Bar Code: SEA026

OF COUNSEL:

Bradford & Sears, P.C. 2020 Canyon Road Suite 100 Birmingham, AL 35216

CERTIFICATE OF SERVICE

I hereby certify that I have this the **25** day of June, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

G. Houston Howard, Esq. Howard, Dunn, Howard & Howard P.O. Box 1148 Wetumpka, Alabama 36092

Mr. John Mark Parker JMP Enterprises P.O. Box 3501 LaGrange, Georgia 30242

OF COUNSEL

SENDER: "Complete Items 1 and/or 2 for additional services of Complete Items 3, 4a, and 4b. "Primt your name and address on the reverse of this card to you. "Attach this form to the front of the malipiece, or on the Petrium Receipt Requested" on the malipiece of the Melivered. "The Return Receipt Will show to whom the article with the malipiece of the malipiece of the malipiece of the petrium. "The Return Receipt will show to whom the article with the malipiece of the mali	I also wish to receive the following services (for an extra fee): 1. Addressee's Address extra fee): 1. Addressee's Address extra fee): 2. Addressee's Address extra fee extr
PS Form 3811 , December 1994	Domestic Return Receipt

LOSS PAYABLE CLAUSE

Document 29-8

We agree with you to change your policy as follows:

- We will pay the loss payee named in the Policy for loss to your insured auto, as the interest of the loss payee may appear.
- The insurance covers the interest of the loss payee unless the loss results from fraudulent acts or omissions on your part.
- Cancellation ends this agreement as to the loss payee's interest. If we cancel the Policy we will mail you and the loss payee the same advance notice.
- 4. If we make any payment to the loss payee, we will obtain his rights against any other party.

Vehicle 1		Vehicle 2
Secured Party Address:	A	Secured Party Address:
Vehicle 3	Ve	Vehicle 4
Secured Party Address:	Ac	Secured Party Address:
All other parts of this Policy remain un	nchanged.	
This endorsement changes Policy No.		
Issued to:		
Name of Insured	Address	City/State
Endorsement Effective:		
	Your Signatu	ature Your Agent
Form No. 1602 (8-83)	INSURED CO	COPY CVCE1009952605L16020

Forms & Documents > 1857

Page 1 of 1

Policy Amendments > Endorsement

State(s): Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida,

Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Bhode Island, South Dakota,

Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming

Status: Inactive

Product: Commercial Auto

Form Number:

1857

Type:

Filing Indicator

This form is an indicator that a federal filing is present on the policy. Filings are issued directly to the state

Last Updated: 01/30/2006 ©2004 Progressive Casualty Insurance Company, All rights reserved.

0006

AMENDATORY ENDORSEMENT PUNITIVE DAMAGES

UNINSURED MOTORISTS COVERAGE

The phrase "OTHER THAN PUNITIVE DAMAGES" in this section does not apply to your policy.

All other terms and conditions remain unchanged.

0007

Form No. 8931 (4-89)

CVSE0125982607L6931

GEORGIA UNINSURED MOTORISTS INSURANCE

It is agreed that the Policy is amended to include the following:

ADDITIONAL DUTY OF A CLAIMANT UNDER THE POLICY

The following is added under the Policy provisions "Your Duties in Case of Accident or Loss"

A person claiming Uninsured Motorists Coverage must notify the police as soon as practicable after the accident if a hit-and-run driver is involved.

Uninsured Motorist Coverage

We will pay damages which an insured is legally entitled to recover from the owner operator of an uninsured auto because of:

- 1. bodily injury, and
- 2. property damage,

caused by accident and resulting from the ownership, maintenance or use of the uninsured auto. **Bodily injury** and **property damage** coverage is subject to a deductible as shown in the Declarations.

If this coverage provides limits in excess of the amounts required by Georgia Financial Responsibility Laws, we will pay only after all bonds or liability Policies have been used up by judgments or payments. If a settlement is made between an insured and the insurer of the uninsured auto for any amount which does not use up the applicable bonds or liability Policies, we will not pay unless we have agreed to do so in writing.

Additional Definitions used in this Endorsement

1. Insured means:

- (a) You or a relative;
- (b) any other person occupying an insured auto;
- (c) any person for damages that person is entitled to recover because of **bodily injury** or **property damage** to **you**, a **relative** or another occupant of **your Insured auto**.

 But no person shall be considered an **insured** if that person uses **your insured auto** without **your** expressed permission.
- Auto means a land motor vehicle or trailer but does not mean a vehicle:
 - (a) operated on rails or crawler treads;
 - (b) which is a farm type tractor or equipment designed for use principally off public roads, while not on public roads;
 - (c) located for use as a residence or premises.
- Occupying means in, on, getting into, off or out of.
- 4. Property Damage means injury to or destruction of the insured auto including loss of use and injury to or destruction of personal property owned by the insured which is contained in the insured auto, but not including the loss of use of damaged or destroyed property.
- Relative means, if you are an individual, a person living in your household related to you by blood, marriage, or adoption, including a ward or foster child.
- 6. Uninsured auto means an auto for which there is:
 - (a) no liability Policy or bond applicable at the time of the accident.
 - (b) a liability Policy or bond applicable at the time of the accident, but its available coverage is less than the limit of liability of this coverage.
 - (c) a liability Policy or bond at the time of the accident by the insurer denies coverage or is or becomes insolvent.

or which is an underinsured auto. An underinsured auto is a motor vehicle or trailer for which the amount paid under all liability Policies or bonds is less than the sum of the limit of insurance for Uninsured

2012 (03-96)

Motorists coverage applicable to the insured under this Policy and the limit of insurance applicable to the insured under any other Policy,

or which is a hit-and-run vehicle whose operator or owner is unknown and which caused an accident resulting in bodily injury or property damage arising out of physical contact to an insured, an auto which an insured is occupying or the insured auto. An insured or someone on your behalf must have reported the accident as soon as practicable to a police officer.

An uninsured auto does not mean and auto designed for use mainly off public roads while not on public roads.

Exclusions

We do not cover bodily injury or property damage sustained by a person or property:

- (1) for any claim settled without our consent. An insured may however, without our consent, release an insurer of an uninsured motor vehicle from further obligation to pay damages after accepting from that insurer a payment or settlement which uses up the applicable Policies or bonds.
- (2) while occupying a motor vehicle with less than (4) wheels.
- (3) while occupying an auto driven without the owner's permission.

Also, this coverage does not apply:

- (1) to an auto or property contained in an auto other than an insured auto.
- (2) to a person for loss of use of damaged or destroyed property.

This coverage does not apply directly or indirectly to the benefit of any insurer or self insurer, under any Worker's Compensation, disability benefits or similar law.

Limits of Liability

- (1) Regardless of the number of autos described in the Declarations, insureds, claims, claimants or Policies involved in the accident, we will pay no more than the limit of Uninsured Motorist Coverage shown in the Declarations.
- (2) We will not pay for any part of loss for which a payment is made or an amount is payable because of the bodily injury under and Worker's Compensation law or disability benefits law or similar law.
- (3) The limit of liability under this coverage will be reduced by all amounts paid or payable by or for anyone who is legally responsible, including any amount paid under this policy's PART Y LIABILITY TO OTHERS coverage.
- (4) We will not pay for any property damage that is paid or payable under PART III DAMAGE TO YOUR AUTO.

Other Insurance

If there is other similar insurance on a loss covered by this Endorsement, the following priorities of recovery apply:
First, the Policy providing Uninsured Motorists and Underinsured Motorists Coverage to the insured as a named insured or relative.

Second, the Uninsured and Underinsured Motorists Coverage applicable to the vehicle the insured was occupying at the time of the accident.

We will pay our proportionate share as our limits of liability bear to the total limits of liability of all applicable similar insurance.

Proof of Claim

Each person making claim under this Endorsement must give us full details of their injuries and treatment. Proof of claim shall be submitted on our forms unless we fail to provide them within 15 days after notice of the claim.

2012 (03-96)

NOTICE OF INSURANCE INFORMATION PRACTICES

In the course of underwriting your insurance policy, information may be gathered from several outside sources. Driving record information is obtained by ordering a Motor Vehicle Report from the Department of Motor Vehicles. In some instances, additional information is ordered from Credit Bureaus and Investigation Organization, or we may call or write your household and ask for additional information necessary to accurately rate your policy. We commonly follow up to see that all eligible drivers in the household are listed on the application.

This information is not disclosed to outside parties without your written authorization except in specific limited circumstances outlined by the law. Examples of these circumstances include to a law enforcement authority or to an insurance regulatory authority, in response to a valid subpoena, search warrant or judicial order, or to a medical professional for the purpose of verifying coverage restrictions.

You have the right to review and correct personal information in your file. Upon request by you, a copy of the information in our files relating to your policy, will be issued to you. The first copy will be at no charge. A charge for additional copies will be equal to the cost of reproduction.

If, after reading this, you have any questions about our procedures or information contained in our files about you, please contact us at:

Progressive Insurance Companies

Cleveland, Ohio 44101

Form No. 8282 (4-84) GA

CVSE0730962607L8282

AUTO DAMAGE LIMIT OF LIABILITY POLICY CHANGE

We agree with you to change Part III, Damage to Your Auto, as follows:

Limit of Liability

If the Limit of Liability shown below is less than 90% of the actual cash value at the time of loss to your Insured auto, you will share with us in the cost of repair or replacement as follows:

- We will pay the same proportion of the loss which the Limit of Liability shown below bears to the actual cash value of your insured auto at the time of loss.
- We will reduce the amount of loss by the Auto Damage deductible shown in the Policy Declarations prior to calculating the proportionate amount we will pay.

If we pay the actual cash value of the auto less the deductible, we are entitled to all salvage.

No. Year	Trade Name	Serial No.	Stated Amount of Insurance
*		·	(Including Custom Parts & Equip.)

All other parts of this Policy remain unc This endorsement changes Policy No.	changed.	
Issued to:	-	
Name of Insured	Address	City/State
Endorsement Effective:	Countersigned By:	
Form No. 8470 (12-96)		Authorized Representative CAICS28C CVNE0505981613L8470



NOTICE OF TERRORISM INSURANCE COVERAGE

Coverage for acts of terrorism is included in your policy. You should know that, effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The portion of your annual premium that is attributable to coverage for acts of terrorism is: \$0,00.

You should file this form with your other policy information.



AMENDATORY CANCELLATION ENDORSEMENT

If this policy is cancelled, we will send you (the first named insured) any premium refund due. If we cancel, the refund will be pro-rata. This means that unearned premium to be returned will be in the same proportion to total policy premium as the remaining policy term (after date of cancellation) bears to the total policy term. Unearned premium will be calculated on a

If you cancel, during the policy period, we will return ninety percent (90%) of the pro-rate unearned premium for the remainder of the policy term after the effective date of cancellation. Unearned premium will be calculated on a daily basis. If the return premium is not refunded upon notice of cancellation, the premium will be refunded within a reasonable time after the date the cancellation takes effect. However, making or offering to make the refund is not a condition of cancellation.

Forms & Documents > MC1632

Page I of 1

Policy Amendments > Endorsement

State(s):

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri. Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming

Status:

Inactive

Product:

Commercial Auto

Form Number:

MC1632

Type:

Filing Indicator

This form is an indicator that a state filing is present on the policy. Filings are issued directly to the state.

> Last Updated: 01/30/2006 ©2004 Progressive Casualty Insurance Company, All rights reserved.

> > 0014

GEORGIA CHANGES

This endorsement changes the policy. Please read it carefully.

Part I-Liability to Others-

Exclusion (1) is amended as follows:

This exclusion does not apply for coverage up to the minumum limit specified by the Georgia Motor Vehicle Safety Responsibility Act.

Part I-Liability to Others-

- (1) Liability coverage is primary for an auto you do not own, if operated by an insured and owned by a retail seller of autos.
- (2) If you are a retail seller of autos, the insurance is excess for an auto you own if operated by an insured other than you or your employee.

Part III-Damage to Your Auto is Amended to Add:

- If collision coverage is provided, the collision coverage is primary for an auto you don't own if operated by the insured and owned by a retail seller of autos.
- (2) If you are a retail seller of autos, the collision insurance is excess for an auto you own if operated by an insured other than you or your employee.

Cancellation of this Policy

- (1) You may cancel this Policy by mailing or delivering to us advance written notice of cancellation stating a future date on which the Policy is to be cancelled, subject to the following:
 - If only your interest is involved, the effective date of cancellation will be either the date we received the notice from you, or the date specified in the notice, whichever is later. If we receive the notice from you we may waive the requirement that the notice state the future date of cancellation by confirming the date and time of cancellation in writing to you.
 - (b) If by statute, regulation or contract, this policy may not be cancelled unless notice is given to a governmental agency, mortgage or third party, we will mail or deliver at least 10 days notice to you and the third party as soon as practiable after receiving your request for cancellation.

Our notice will state the effective date of cancellation which will be later of the following:

- 10 days from the date of mailing or delivering our notice, or
- the effective date of cancellation stated in your notice to us

Form No. 9809 (04-96)

CVSE1011962605L9809

- (2) We may cancel this policy by mailing or delivering to you written notice of cancellation at least:
 - (a) 10 days before the effective date of cancellation if we cancel for non-payment of premium:
 - (b) 45 days before the effective date of cancellation if we cancel for any other reason.
 - (c) We will mail or deliver our notice to your last mailing known to us.

Our notice of cancellation will state the effective date of cancellation. The Policy period will end on that date.

If notice is mailed, a receipt provided by, or other evidence of mailing as required or accepted by the US Postal Service shall be sufficient proof of notice.

Nonrenewal of this Policy

We may elect not to renew or continue this policy by mailing or delivering to you written notice before the end of the policy period. If we fall to provide notice within 45 days of the policy period, the policy will continue in effect until 30 days from the date of notice.

You will be responsible for any premiums due while the policy is in effect. If we offer or continue and you do not accept, this policy will terminate at end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If we fail to mail or deliver proper notice of nonrenewal and you obtain other insurance this policy will end on the effective date of that insurance.

If notice is mailed, a receipt provided by, or other evidence of mailing as required or accepted by, the US Postal Service shall be sufficient proof of notice.

Form No. 9809 (04-98)

CVSE1011962605L9809

AMENDATORY ENDORSEMENT (Puntive Damages)

PART I - LIABILITY TO OTHERS

The phrase "Other than punitive damages" in this section does not apply to your policy.

All other terms and conditions remain unchanged.

Form No. 8627 (3-88)

CVSE0208962607L8627

EXHIBIT H:

FIRST REQUEST FOR ADMISSION TO PROGRESSIVE

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY Plaintiff

VS.

CASE NO. 3:06-CV-00934

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN Defendants

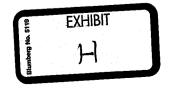
GOLDEN'S FIRST REQUEST FOR ADMISSIONS TO PROGRESSIVE

INSTRUCTIONS FOR USE: Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the plaintiff requests the defendants to admit the truth of the following matters. Copies of the exhibits listed below were previously furnished to the defendants' attorneys by the plaintiff's attorney; an additional copy of the exhibits will be furnished to you upon written request.

You are further reminded that Rule 37(c) of the Federal Rules of Civil Procedure provides in part, "If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him reasonable expenses incurred in making that proof, including reasonable attorney's fees."

Definitions: The "state court action" refers to that action filed by Jennifer Golden in the Circuit Court of Lee County, Alabama, on or about February 14, 2006, being case number CV-2006-106.

- 1. Golden's manufactured home, which is the subject of the state court action, was a "trailer" as that term is defined in the policy.
- 2. Golden's manufactured home, which is the subject of the state court action, was a "non-owned attached TRLR" as described in item two of the auto's coverage schedule for the policy while



it was attached to a listed power unit specifically described in paragraphs one and two of the Declaration's Page of the policy.

- 3. Parker delivered Golden's manufactured home using one of the automobiles described in paragraphs one or three of the Declaration's Page of the policy.
- 4. Progressive did not provide any notice to John Mark Parker that it was assuming the defense of Golden's state court action before it filed an Answer in such case on Parker's behalf.

HOWARD, DUNN, HOWARD & HOWARD

Attorney for Jennifer M. Golden

By:

G. Houston Howard II

Of Counsel:

G. Houston Howard II (HOW015)

Howard, Dunn, Howard & Howard

P.O. Box 1148

Wetumpka, Alabama 36092

Telephone: 334-567-4356 Facsimile: 334-567-7080

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

counsel of record, by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the day of February, 2007.

Of Counsel

Doc: Houston\Golden.Jennifer\Progressive\Request.Admissions

EXHIBIT I:

PROGRESSIVE'S RESPONSE TO FIRST REQUEST FOR ADMISSION

exhibit

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA **EASTERN DIVISION**

PROGRESSIVE PREFERRED)
INSURANCE COMPANY,)
Plaintiff,	
v.) Civil Action Number: 3:06-CV-00934
JMP ENTERPRISES, INC.;)
JOHN MARK PARKER; and)
JENNIFER M. GOLDEN,)
Defendants.	and the second second is the second of the second of the second s

OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSIONS BY PLAINTIFF, PROGRESSIVE PREFERRED INSURANCE COMPANY ("PROGRESSIVE")

GENERAL OBJECTIONS

- Progressive objects to any and all requests for admissions to the extent that they 1. are vague, overly broad, unduly burdensome, harassing and/or not calculated to lead to the discovery of relevant or admissible evidence.
- 2. Progressive objects to any and all requests for admissions to the extent that they seek information protected from discovery by any privilege, including the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or immunity.
- 3. Progressive objects to any and all requests for admissions to the extent that they seek confidential, financial, or proprietary business information.
- 4. Progressive objects to any requests for admissions which are not reasonably limited in time and/or scope.

5. Progressive objects to any and all requests for admissions to the extent that they contain certain key terms which are not defined or that are unreasonably compound, disjunctive, or conjunctive.

These "General Objections" are applicable to and incorporated into each of the plaintiff's responses as if specifically stated therein. The stating of specific objections to a particular request shall not be construed as a waiver of the plaintiff's "General Objections." Unless otherwise specifically stated, Progressive's objections to each request for admissions apply to the entire request, including each and every subsection and/or subpart of the request.

SPECIFIC OBJECTIONS AND RESPONSES

- 1. Progressive admits that Ms. Golden's mobile home is not excluded from the definition of "trailer" in definition 6 of the policy.
- 2. Progressive admits that Ms. Golden's mobile home would constitute a non-owned attached trailer while it was attached to a listed tower unit as described in item number 2 of the auto coverage schedule.
- 3. Progressive does not have information to admit or deny this request at this time although it assumes that the request is accurate. Progressive bifurcated the liability issues from the coverage issues; thus, the coverage file does not contain any of the depositions in the liability case.

Progressive has requested from the insured's defense counsel copies of the depositions taken in the underlying state court case. Progressive will conditionally admit this request at this time, but reserves the right to file a supplemental response to deny the request (if appropriate) after reviewing the deposition transcripts.

4. Denied. Progressive's liability adjuster, Jerry Knight, attempted to contact the insureds on two separate occasions before the answer was filed to discuss the claim and to notify the insureds that a defense was being provided.

Laur Be union

R. Larry Bradford, Attorney for Plaintiff Progressive Preferred Insurance Company Attorney Bar Code: BRA039

OF COUNSEL:

Bradford & Sears, P.C. 2020 Canyon Road Suite 100 Birmingham, AL 35216

CERTIFICATE OF SERVICE

I hereby certify that I have this the <u>77</u> day of March, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

G. Houston Howard, Esq. Howard, Dunn, Howard & Howard P.O. Box 1148 Wetumpka, Alabama 36092

Mr. John Mark Parker JMP Enterprises P.O. Box 3501 LaGrange, Georgia 30242

Havis Brunpoul
of COUNSEL

EXHIBIT J:

FIRST REQUEST FOR PRODUCTION TO PROGRESSIVE

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY Plaintiff

VS.

CASE NO. 3:06-CV-00934

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN Defendants

GOLDEN'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO PROGRESSIVE

<u>INSTRUCTIONS FOR USE</u>: You are hereby requested to produce the documents listed below for inspection and copying at the offices of HOWARD, DUNN, HOWARD & HOWARD located at 102 South Boundary Street, Wetumpka, Alabama 36092, within the time allowed by law. The documents produced shall be grouped or numbered in accordance with the item numbers listed below. You are further requested to file a written response to this request for production of documents indicating, with respect to each numbered item or category, whether any such documents exist and whether such documents are being produced.

Definitions: The "state court action" refers to that action filed by Jennifer Golden in the Circuit Court of Lee County, Alabama, on or about February 14, 2006, being case number CV-2006-106.

- 1. The application for the policy of insurance that is the subject of this case, or if no application was made for this policy, then the application for the most immediate predecessor policy for which an application was made.
 - 2. All reservation of rights letters issued to John Mark Parker and JMP Enterprises, Inc.
 - 3. All reservation of rights agreements with John Mark Parker and JMP Enterprises, Inc.



4. All notices provided to John Mark Parker and JMP Enterprises, Inc. that Progressive had or would assume the defense of the state court action.

HOWARD, DUNN, HOWARD & HOWARD

Attorney for Jennifer M. Golden

Bv

G. Houston Howard II

Of Counsel:

G. Houston Howard II (HOW015)

Howard, Dunn, Howard & Howard

P.O. Box 1148

Wetumpka, Alabama 36092 Telephone: 334-567-4356

Facsimile: 334-567-7080

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

Of Counsel

EXHIBIT K:

PROGRESSIVE'S RESPONSE TO FIRST REQUEST FOR PRODUCTION

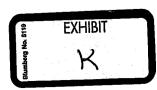
IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED)
INSURANCE COMPANY,)
Plaintiff,)
V.) Civil Action Number: 3:06-CV-00934
JMP ENTERPRISES, INC.;	
JOHN MARK PARKER; and)
JENNIFER M. GOLDEN,)
)
Defendants.	

OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION BY PLAINTIFF, PROGRESSIVE PREFERRED INSURANCE COMPANY ("PROGRESSIVE")

GENERAL OBJECTIONS

- 1. Progressive objects to any and all requests for production to the extent that they are vague, overly broad, unduly burdensome, harassing and/or not calculated to lead to the discovery of relevant or admissible evidence.
- 2. Progressive objects to any and all requests for production to the extent that they seek information protected from discovery by any privilege, including the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or immunity.
- 3. Progressive objects to any and all requests for production to the extent that they seek confidential, financial, or proprietary business information.
- 4. Progressive objects to any requests for production which are not reasonably limited in time and/or scope.



5. Progressive objects to any and all requests for production to the extent that they contain certain key terms which are not defined or that are unreasonably compound, disjunctive, or conjunctive.

These "General Objections" are applicable to and incorporated into each of the plaintiff's responses as if specifically stated therein. The stating of specific objections to a particular request shall not be construed as a waiver of the plaintiff's "General Objections." Unless otherwise specifically stated, Progressive's objections to each request for production apply to the entire request, including each and every subsection and/or subpart of the request.

SPECIFIC OBJECTIONS AND RESPONSES

- 1. Progressive does not have a copy of the application because the information is electronically uploaded to Progressive by the agent. However, Progressive has contacted University Agency in Auburn and requested that it furnish it with a copy of the application. Progressive will produce this information when it is received.
- 2. A copy of the reservation of rights letter to the insured dated April 27, 2006 is attached.
- 3. See response to request number 2. There was no separate nonwaiver agreement.
- 4. There were no written notices to the insured concerning Progressive's assumption of the defense. Progressive typically will notify the insured that it is assuming the defense and inform the insured of the name of the defense attorney. Here, Progressive never received notice of claim and apparently did not receive notice of the lawsuit until the default application had already been filed against the insured.

Therefore, Progressive's liability adjuster, Jerry Knight, attempted to contact the insured on two occasions to notify him of the defense of the case. He did not receive a return phone call at that time. Therefore, Mr. Knight contacted defense counsel on or around May 15, 2006 to defend the case and obviously that defense counsel would have had communications with the insureds soon after that date.

Raus be warper

R. Larry Bradford, Attorney for Plaintiff Progressive Preferred Insurance Company Attorney Bar Code: BRA039

OF COUNSEL:

Bradford & Sears, P.C. 2020 Canyon Road Suite 100 Birmingham, AL 35216

CERTIFICATE OF SERVICE

I hereby certify that I have this the _____ day of March, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

G. Houston Howard, Esq. Howard, Dunn, Howard & Howard P.O. Box 1148 Wetumpka, Alabama 36092

Mr. John Mark Parker JMP Enterprises P.O. Box 3501 LaGrange, Georgia 30242

Cacco Beverpoise OF COUNSEL

Filed 07/10/2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 27, 2006

JMP Enterprises, Inc. Attn.: John Parker P. O. Box 3501 Lagrange, Ga. 30241

Re:

Claim Number:

068235992

Date of Loss:

April 27, 2005

Policy Number:

08263817-0

Named Insured:

JMP Enterprises, Inc.

Dear Mr. Parker:

As you know, the above referenced claim was reported to Progressive Preferred Insurance Company. After initial review, it appears we have a potential coverage problem as this loss doesn't appear to meet the definition of a "accident" under your policy. Please refer to page 5 of your Progressive Policy/Contract #08263817-0 which states:

8. "Accident" means a sudden, unexpected and unintended event, or a continuous or repeated exposure to that event, that causes bodily injury or property damage and arises out of the ownership, maintenance or use of your insured

Therefore, it is for the above reason that the handling of this file will be conducted under a Reservation of Rights. No action taken to date, nor any action this company might take in the future to investigate, explore settlement, or defend a lawsuit arising out of the above mentioned claim shall be deemed to be an admission of coverage under Policy No. 08263817-0 issued to JMP Enterprises, Inc.. Progressive expressly reserves all rights of denial under the policy and in no way waives any of our rights. The investigation of this matter has been, and is being conducted, with full and complete reservation of rights afforded us under policy of insurance issued to JMP Enterprises, Inc.

Once we have had an opportunity to complete our investigation into this matter, we will be in touch to advise you of our position with regards to coverage. Should you have any questions for me, please don't hesitate to contact me at (334) 244-4516.

Sincerely,

Jerry Knight Casualty Specialist Progressive Preferred Insurance Company

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EXHIBIT L:

FIRST INTERROGATORIES TO PROGRESSIVE

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

Document 29-13

PROGRESSIVE PREFERRED INSURANCE COMPANY Plaintiff

VS.

CASE NO. 3:06-CV-00934

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN Defendants

GOLDEN'S FIRST INTERROGATORIES TO PROGRESSIVE

Instructions For Use: In answering the following interrogatories, you are required by law to answer each interrogatory separately and fully under oath. You are required to supply all information available to you, including information held by your attorney. If you discover additional information after filing your answers to these interrogatories, you are required by law to supplement your answers.

Definitions: The "state court action" refers to that action filed by Jennifer Golden in the Circuit Court of Lee County, Alabama, on or about February 14, 2006, being case number CV-2006-106.

- 1. Identify, by page and section number, each policy provision that you contend excludes coverage for Golden's claims.
- 2. State the facts on which you base your contention that the policy provisions identified in response to interrogatory one exclude coverage.



1

- 3. At any time before you assumed the defense of Golden's state court action against John Mark Parker did you notify John Mark Parker that you were assuming the defense of the state court action?
 - 4. If the answer to the last question is yes, please state the following information:
 - a. The date that Parker was notified;
 - b. The manner in which Parker was notified, whether orally or in writing;
 - c. The name of the person who provided notice to Parker;
 - d. The substance of the notification to Parker.
- 5. Did you ever provide Parker or JMP Enterprises, Inc. with a copy of the policy at any time before the filing of Golden's state court action?
 - 6. If the answer to the last question is yes, please state the following information:
 - a. Who provided Parker with the policy;
 - b. When Parker was provided with the policy;
 - c. Whether the Parker policy was provided by mail, hand delivery, or some other method.

7. Was Golden's mobile home, as described in the state court action, a "trailer" as that term is defined in the policy?

HOWARD, DUNN, HOWARD & HOWARD

Attorney for Jennifer M. Golden

G. Houston Howard II

Of Counsel:

G. Houston Howard II (HOW015)

Howard, Dunn, Howard & Howard

P.O. Box 1148

Wetumpka, Alabama 36092 Telephone: 334-567-4356 Facsimile: 334-567-7080

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

counsel of record, by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the day of February, 2007.

Of Counsel

Doc: Houston \Golden. Jennifer \Progressive \First. Interrogatories

EXHIBIT M:

PROGRESSIVE'S ANSWERS TO FIRST INTERROGATORIES

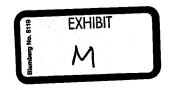
IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY,))
Plaintiff,)
v.) Civil Action Number: 3:06-CV-00934
JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN,	
Defendants.	

OBJECTIONS AND ANSWERS TO INTERROGATORIES BY PLAINTIFF, PROGRESSIVE PREFERRED INSURANCE COMPANY ("PROGRESSIVE")

GENERAL OBJECTIONS

- 1. Progressive objects to any and all interrogatories to the extent that they are vague, overly broad, unduly burdensome, harassing and/or not calculated to lead to the discovery of relevant or admissible evidence.
- 2. Progressive objects to any and all interrogatories to the extent that they seek information protected from discovery by any privilege, including the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or immunity.
- 3. Progressive objects to any and all interrogatories to the extent that they seek confidential, financial, or proprietary business information.
- 4. Progressive objects to any interrogatories which are not reasonably limited in time and/or scope.



5. Progressive objects to any and all interrogatories to the extent that they contain certain key terms which are not defined or that are unreasonably compound, disjunctive, or conjunctive.

These "General Objections" are applicable to and incorporated into each of the plaintiff's interrogatories as if specifically stated therein. The stating of specific objections to a particular request shall not be construed as a waiver of the plaintiff's "General Unless otherwise specifically stated, Progressive's objections to each interrogatory apply to the entire request, including each and every subsection and/or subpart of the request.

SPECIFIC OBJECTIONS AND ANSWERS

1. Progressive issued a commercial auto policy to JMP Enterprises, Inc. The policy number was 08263817-0. The policy form number was 1050(11/94).

The policy provided liability coverage for which an insured is legally liable because of an accident (page 9). The term "accident" was defined in definition 8 to mean a sudden, unexpected and unintended event arising out of the ownership, maintenance or use of your insured auto (page 5).

In turn, the term "your insured auto" was defined in definition 9 to include the auto described on the declarations page. It further included a trailer designed primarily for travel on public roads (pages 5-6).

The policy excluded contractual liability coverage (page 11). It excluded property damage to any property being transported or in the charge of an insured in exclusion 9. It excluded bodily injury or property damage resulting from the loading or unloading of property in exclusion 10 (page 13).

The policy contained a condition which required the insured to notify Progressive as soon as practicable of an accident or loss (page 1). Another condition required the insured to promptly send Progressive any and all legal papers received relating to any claim or lawsuit (page 2).

Discovery is just beginning in this declaratory judgment action and has not 2. been completed in the underlying state court action. However, it appears that any claims against the insured for breach of contract or breach of warranty do not constitute an "accident" and are excluded from liability by the contractual liability exclusion.

Further, it appears that the damages to Ms. Golden's mobile home were not caused by an "accident" as that term is defined in the policy. Damages to the mobile home while being transported or while being loaded or unloaded are excluded from coverage.

Further, it does not appear that the insureds gave Progressive timely notice of the claim or timely notice of the lawsuit. Ms. Golden's mobile home was transported and set-up around April 27, 2005. However, Progressive never received notice of the claim or lawsuit until it received the letter from Ms. Golden's attorney dated April 13, 2006.

3. Yes, Progressive attempted to notify Mr. Parker that it was assuming the defense of him.

- 4. Jerry Knight of Progressive attempted to contact Mr. Parker on April 27, 2006 and again on May 2, 2006 to notify him that Progressive had received notice of the lawsuit. However, it does not appear that Mr. Parker responded to these calls until his wife contacted Progressive on or around June 12, 2006.
 - 5. Yes.
- 6. Progressive's policyholder services department would have automatically mailed the insured a copy of the commercial auto policy when it incepted on August 1, 2004. Mr. Parker would have been sent a copy of the declarations page and an I.D. card at the same time. Further, Mr. Parker would have been provided with a declarations page any time there was an endorsement to the policy.
- 7. Ms. Golden's mobile home meets the definition of "trailer" in definition 6 of the policy or, more specifically, that definition does not exclude a mobile home from the scope of the definition.

Progressive Preferred Insurance Company

By: <u>Burloon Lanham</u>

Its: Charus Rep

Sworn to and subscribed before me this the <u>3</u> day of May, 2007.

otary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE MY COMMISSION EXPIRES: July 12, 2009 BONDED THRU NOTARY PUBLIC UNDERWRITERS

Race Blayout

R. Larry Bradford, Attorney for Plaintiff Progressive Preferred Insurance Company

Attorney Bar Code: BRA039

OF COUNSEL:

Bradford & Sears, P.C. 2020 Canyon Road Suite 100 Birmingham, AL 35216

CERTIFICATE OF SERVICE

I hereby certify that I have this the ____ day of May, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

G. Houston Howard, Esq. Howard, Dunn, Howard & Howard P.O. Box 1148 Wetumpka, Alabama 36092

Mr. John Mark Parker JMP Enterprises P.O. Box 3501 LaGrange, Georgia 30242

Race Becupous

OF COUNSEL

EXHIBIT N:

SECOND REQUEST FOR ADMISSION TO PROGRESSIVE

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY Plaintiff

VS.

CASE NO. 3:06-CV-00934

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN Defendants

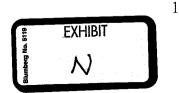
GOLDEN'S SECOND REQUEST FOR ADMISSIONS TO PROGRESSIVE

INSTRUCTIONS FOR USE: Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the plaintiff requests the defendants to admit the truth of the following matters. Copies of the exhibits listed below were previously furnished to the defendants' attorneys by the plaintiff's attorney; an additional copy of the exhibits will be furnished to you upon written request.

You are further reminded that Rule 37(c) of the Federal Rules of Civil Procedure provides in part, "If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him reasonable expenses incurred in making that proof, including reasonable attorney's fees."

Definitions: The "state court action" refers to that action filed by Jennifer Golden in the Circuit Court of Lee County, Alabama, on or about February 14, 2006, being case number CV-2006-106.

- 5. The plaintiff Progressive authorized the firm of Nix Holtsford Gilliland Higgins & Hitson, P.C. to file the Answer attached hereto as defendants' exhibit 10 to Golden's state court action.
- 6. At the time that Nix Holtsford Gilliland Higgins & Hitson, P.C. filed the Answer attached as exhibit 10, Progressive had not orally told John Mark Parker or any agent, servant, or employee of JMP Enterprises, Inc. that it was assuming the defense of the state court action.



- 7. At the time Nix Holtsford Gilliland Higgins & Hitson, P.C. filed the Answer attached hereto as defendants' exhibit 10, Progressive had not mailed any letter to John Mark Parker or JMP Enterprises, Inc. that stated that Progressive was assuming the defense of the state court action.
- 8. At the time Nix Holtsford Gilliland Higgins & Hitson, P.C. filed the Answer marked as defendants' exhibit 10 to the state court action, no agent, servant, employee or attorney of Progressive had talked to John Mark Parker about Golden's state court action or the possibility of Progressive defending that action.
- 9. At the time Nix Holtsford Gillian Higgins and Hitson, P.C. filed the Answer marked as defendants' exhibit 10 to the state court action, no agent, servant, employee or attorney of Progressive had talked to JMP Enterprises, Inc. or any of its agents, servants, or employees about Golden's state court action or the possibility of Progressive defending that action.

HOWARD, DUNN, HOWARD & HOWARD

Attorney for Jennifer M. Golden

By:

G. Houston Howard II

Of Counsel:

G. Houston Howard II (HOW015)

Howard, Dunn, Howard & Howard

P.O. Box 1148

Wetumpka, Alabama 36092

Telephone: 334-567-4356

Facsimile: 334-567-7080

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

counsel of record, by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the A day of May, 2007.

Of Counsel

Doc: Houston \Golden. Jennifer \Progressive \Request. Second Admissions

IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

JENNIFER M. GOLDEN,

Plaintiff,

VS.

CIVIL ACTION NO.: CV-06-106

DEER VALLEY HOMEBUILDERS, INC., A Corporation; TIMBERLINE HOMES, INC., A Corporation; And JOHN MARK PARKER, An Individual.

Defendants.

ANSWER TO COMPLAINT

COMES NOW Defendant John Mark Parker, by and through the undersigned attorney, and for answer to the Complaint, says as follows:

- No answer is required of this Defendant as to Count I of the Complaint.
 However, any allegations therein against this Defendant are hereby denied.
- 2. No answer is required of this Defendant as to Count II of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- No answer is required of this Defendant as to Count III of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- 4. No answer is required of this Defendant as to Count IV of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- No answer is required of this Defendant as to Count V of the Complaint.
 However, any allegations therein against this Defendant are hereby denied.



- 6. No answer is required of this Defendant as to Count VI of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- 7. No answer is required of this Defendant as to Count VII of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- 8. No answer is required of this Defendant as to Count VIII of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- 9. No answer is required of this Defendant as to Count IX of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- 10. No answer is required of this Defendant as to Count X of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- 11. No answer is required of this Defendant as to Count XI of the Complaint.

 However, any allegations therein against this Defendant are hereby denied.
- 12. This Defendant denies all material allegations of Count XII of the Complaint and demands strict proof thereof.
- 13. This Defendant denies all material allegations of Count XIII of the Complaint and demands strict proof thereof.
- 14. This Defendant denies all material allegations of Count XIV of the Complaint and demands strict proof thereof.
- 15. This Defendant denies all material allegations of Count XV of the Complaint and demands strict proof thereof.

- This Defendant is not aware of the person named in the Complaint as

 Gerald Mark Parker, and any allegations against a person by the name of

 Gerald Mark Parker are unknown to this Defendant.
- 17. This Defendant affirmatively avers that arbitration may be proper for this case, and this Defendant hereby asserts the right to arbitration and preserves any claim for relief by arbitration in this case.
- 18. This Defendant affirmatively avers intervening or superseding causation.
- 19. This Defendant affirmatively avers contributory negligence.
- 20. This Defendant adopts in full all defenses raised by or available to the Co-Defendants as if set for th in full herein.
- 21. This Defendant reserves the right to supplement this answer in the future.
- 22. This Defendant pleads improper venue.
- 23. This Defendant pleads lack of jurisdiction.

24. This Defendant pleads the general issue.

ALEX L. HOLTSFORD, JR. (HOLO48)

Attorney For Defendant

OF COUNSEL:

NIX HOLTSFORD GILLILAND HIGGINS & HITSON, P.C.

Post Office Box 4128

Montgomery, Alabama 36103-4128

Telephone:

(334) 215-8585

Facsimile:

(334) 215-7101

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed, postage prepaid, an exact copy of the foregoing document to:

G. Houston Howard, II (Via-Facsimile Transmission-567-7080) Attorney For Plaintiff HOWARD, DUNN, HOWARD & HOWARD Post Office Box 1148 Wetumpka, Alabama 36092

Robert Scott Hunt HAMMITTE & HUNT Post Office Box 397 Hamilton, Alabama 35570

Joel A. Williams
SADLER SULLIVAN, P.C.
Suite 2500
420 N. 20th Street
Birmingham, Alabama 35203-5203

This the 17th day of May, 2006.

OF COUNSEL

EXHIBIT O:

PROGRESSIVE'S RESPONSE TO SECOND REQUEST FOR ADMISSION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

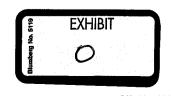
PROGRESSIVE PREFERRED	
INSURANCE COMPANY,)
Plaintiff,	
V.) Civil Action Number: 3:06-CV-00934
)
JMP ENTERPRISES, INC.;)
JOHN MARK PARKER; and)
JENNIFER M. GOLDEN,	
)
Defendants.	·)

OBJECTIONS AND RESPONSES TO JENNIFER GOLDEN'S SECOND REQUESTS FOR ADMISSION BY PLAINTIFF, PROGRESSIVE PREFERRED INSURANCE COMPANY ("PROGRESSIVE")

Comes now the defendant, Progressive Preferred Insurance Company ("Progressive"), pursuant to Rule 36 of the Federal Rules of Civil Procedure, and objects to Jennifer Golden's ("Golden") second requests for admission as follows:

GENERAL OBJECTIONS

- 1. Progressive objects to any and all requests for admission to the extent that they are vague, overly broad, unduly burdensome, harassing and/or not calculated to lead to the discovery of relevant or admissible evidence.
- 2. Progressive objects to any and all requests for admission to the extent that they seek information protected from discovery by any privilege, including the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or immunity.



- 3. Progressive objects to any and all requests for admission to the extent that they seek confidential, financial, or proprietary business information.
- 4. Progressive objects to any requests for admission which are not reasonably limited in time and/or scope.
- 5. Progressive objects to any and all requests for admission to the extent that they contain certain key terms which are not defined or that are unreasonably compound, disjunctive, or conjunctive.

These "General Objections" are applicable to and incorporated into each of the plaintiff's responses as if specifically stated therein. The stating of specific objections to a particular request shall not be construed as a waiver of the plaintiff's "General Objections." Unless otherwise specifically stated, Progressive's objections to each request for admission apply to the entire request, including each and every subsection and/or subpart of the request.

SPECIFIC OBJECTIONS AND RESPONSES

- 5. Admit.
- 6. Deny.
- 7. Deny.
- 8. Deny.
- 9. Deny.

R. Larry Bradford, Attorney for Plaintiff, Progressive Preferred Insurance Company

Attorney Bar Code: BRA039

Case 3:06-cv-00934-WKW-TFM Document 29-16 Filed 07/10/2007 Page 4 of 4

Shane T. Sears, Attorney for Plaintiff, Progressive Preferred Insurance Company

Attorney Bar Code: SEA026

OF COUNSEL:

Bradford & Sears, P.C. 2020 Canyon Road Suite 100 Birmingham, AL 35216

CERTIFICATE OF SERVICE

I hereby certify that I have this the day of June, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

G. Houston Howard, Esq. Howard, Dunn, Howard & Howard P.O. Box 1148 Wetumpka, Alabama 36092

Mr. John Mark Parker JMP Enterprises P.O. Box 3501 LaGrange, Georgia 30242

OCOUNSEL

EXHIBIT P:

THIRD REQUEST FOR ADMISSIONS TO PROGRESSIVE

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY Plaintiff

VS.

CASE NO. 3:06-CV-00934

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN Defendants

GOLDEN'S THIRD REQUEST FOR ADMISSIONS TO PROGRESSIVE

<u>INSTRUCTIONS FOR USE</u>: Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the plaintiff requests the defendants to admit the truth of the following matters. Copies of the exhibits listed below were previously furnished to the defendants' attorneys by the plaintiff's attorney; an additional copy of the exhibits will be furnished to you upon written request.

You are further reminded that Rule 37(c) of the Federal Rules of Civil Procedure provides in part, "If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him reasonable expenses incurred in making that proof, including reasonable attorney's fees."

Definitions: The "state court action" refers to that action filed by Jennifer Golden in the Circuit Court of Lee County, Alabama, on or about February 14, 2006, being case number CV-2006-106.

- 10. When Progressive sold JMP the policy that it is the subject of this action, it knew that Parker and JMP were in the business of delivering and installing manufactured homes that JMP and Parker did not own.
- 11. When Progressive sold JMP the policy that is the subject of this action, it knew that the vehicles listed in paragraphs one and three on the schedule of covered automobiles where used to deliver manufactured homes that neither Parker nor JMP owned.



- 12. Prior to the filing of this action, Progressive never told or informed Parker or JMP, either orally or in writing, of any specific defense to coverage other than that Golden's damages did not arise from an accident, as stated in Progressive's letter of April 26, 2007.
- 13. Progressive never told or informed Parker or JMP, either orally or in writing, that Progressive had received inadequate notice of the alleged accident or Golden's claims until Progressive filed its Motion to Amend Complaint in this action on March 27, 2007.
- 14. Progressive never told or informed Parker or JMP, either orally or in writing that Progressive had received inadequate notice of Golden's suit until it filed its Motion to Amend Complaint in this action on March 27, 2007.

HOWARD, DUNN, HOWARD & HOWARD

Attorney for Jennifer M. Golden

By:

G. Houston Howard II

Of Counsel:

G. Houston Howard II (HOW015)

Howard, Dunn, Howard & Howard

P.O. Box 1148

Wetumpka, Alabama 36092

Telephone: 334-567-4356

Facsimile: 334-567-7080

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

counsel of record, by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the _____ day of June, 2007.

Of Counsel

Doc: Houston\Golden.Jennifer\Progressive\Admissions.NewRequest

EXHIBIT Q:

PROGRESSIVE'S RESPONSE TO THIRD REQUEST FOR ADMISSION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

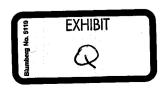
PROGRESSIVE PREFERRED)
INSURANCE COMPANY,)
Plaintiff,	
i iaiitiii,)
v.) Civil Action Number: 3:06-CV-00934
)
JMP ENTERPRISES, INC.;)
JOHN MARK PARKER; and)
JENNIFER M. GOLDEN,)
)
Defendants.	

OBJECTIONS AND RESPONSES TO JENNIFER GOLDEN'S THIRD REQUESTS FOR ADMISSIONS BY PLAINTIFF, PROGRESSIVE PREFERRED INSURANCE COMPANY ("PROGRESSIVE")

Comes now the defendant, Progressive Preferred Insurance Company ("Progressive"), pursuant to Rule 36 of the Federal Rules of Civil Procedure, and objects to Jennifer Golden's ("Golden") third requests for admissions as follows:

GENERAL OBJECTIONS

- 1. Progressive objects to any and all requests for admission to the extent that they are vague, overly broad, unduly burdensome, harassing and/or not calculated to lead to the discovery of relevant or admissible evidence.
- 2. Progressive objects to any and all requests for admission to the extent that they seek information protected from discovery by any privilege, including the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or immunity.



Filed 07/10/2007

- 3. Progressive objects to any and all requests for admission to the extent that they seek confidential, financial, or proprietary business information.
- 4. Progressive objects to any requests for admission which are not reasonably limited in time and/or scope.
- 5. Progressive objects to any and all requests for admission to the extent that they contain certain key terms which are not defined or that are unreasonably compound, disjunctive, or conjunctive.

These "General Objections" are applicable to and incorporated into each of the plaintiff's responses as if specifically stated therein. The stating of specific objections to a particular request shall not be construed as a waiver of the plaintiff's "General Objections." Unless otherwise specifically stated, Progressive's objections to each request for admission apply to the entire request, including each and every subsection and/or subpart of the request.

SPECIFIC OBJECTIONS AND RESPONSES

- 10. Admit.
- 11. Admit.
- 12. Deny.
- 13. Admit.
- Admit. 14.

Laurbe mexou

R. Larry Bradford, Attorney for Plaintiff, Progressive Preferred Insurance Company Attorney Bar Code: BRA039

OF COUNSEL:

Bradford & Sears, P.C. 2020 Canyon Road Suite 100 Birmingham, AL 35216

CERTIFICATE OF SERVICE

I hereby certify that I have this the _____ day of June, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

G. Houston Howard, Esq. Howard, Dunn, Howard & Howard P.O. Box 1148 Wetumpka, Alabama 36092

Mr. John Mark Parker JMP Enterprises P.O. Box 3501 LaGrange, Georgia 30242

OF COUNSEL

EXHIBIT R:

EXCERPTS FOR 2005 REGULATIONS OF ALABAMA MANUFACTURED HOUSING COMMISSION

ALABAMA MANUFACTURED HOUSING COMMISSION STATUTORY LAW

2005 EDITION

INCLUDING
RULES AND REGULATIONS





CHAPTER 535-X-12 CERTIFICATION OF INSTALLATION PERSONNEL

TABLE OF CONTENTS

535-X-1201	Purpose
535-X-1202	Definitions
535-X-1203	Certification
535-X-1204	Installation of Manufactured Homes or Manufactured Buildings
535-X-1205	Reporting Requirements
535-X-1206	Requirements of Manufacturer's Plans or Engineer's Plans
535-X-1207	Inspection of Installation
535-X-1208	Penalties and Appeals

535-X-12-.01 Purpose

For the health, safety, and welfare of people who utilize manufactured homes and/or buildings (modulars), all manufactured homes, new or used, shall be installed by a person duly certified by the Commission to make said installation. All manufactured buildings, new or used, shall also be installed by a person duly certified by the Commission to make said installation.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-5-31, 24-5-32, 24-6-4.

History of Rule: Filed February 6, 1990. Amended: Filed June 24, 1993; Effective

July 29, 1993. Amended: Filed July 27, 2000; effective October 1,

2000.

535-X-12-.02 Definitions

As used in this chapter, the following terms shall have the meanings ascribed to them by this section:

- (1) Approved Installation Plans Plans which conform to the recognized codes and regulatory requirements of the Commission and which provide for (1) the assembly of a manufactured home or manufactured building or the components of a manufactured home or manufactured building on site, and (2) the process of affixing a manufactured home or manufactured building to land, a foundation, footing, or an existing building and service connections which are a part thereof.
- (2) Certified Installer A person, firm or corporation certified by the Commission to install a manufactured home or manufactured building.
- (3) Transporter/Carrier/Mover A person or business who transports, hauls or moves a manufactured home or manufactured building.
- (4) Commission The Administrator, an Advisory Board and other staff and personnel.

- (5) Installation—The locating, setting up, siting, installing, tying down, anchoring, or placing a manufactured home or manufactured building on the lot or site of installation. Any person and/or business who pulls and drops a manufactured home or manufactured building for final site delivery/installation shall notify the Commission of the exact location by certified mail or fax within 72 hours. To eliminate questions and concerns about whether a carrier installed a home or building, the carrier will be required to furnish, upon a request from the Commission, a signed and witnessed statement from the owner of the home or building that the carrier did not participate or contribute in any manner to the installation of the home or building. Carriers will only be allowed to block said units for the sole purpose of removing wheels and axles from the home or building. Any further blocking of the home or building by the carrier will be considered as an installation of the unit. The connection of gas, electrical, central heat and air conditioning, sewer, and water services shall be connected by licensed and/or certified contractors who are otherwise regulated by law.
 - (6) Manufactured Building See §24-4A-2
- (7) Manufactured Home Any residential dwelling unit constructed to standards and codes as promulgate by the United States Department of Housing and Urban Development.
- (8) Modular Home A manufactured building built and inspected in accordance with a national building code and in compliance with the provisions of Code of Alabama, 1975, Title 24, Chapter 4A.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-5-31, 24-5-32, 24-6-4.

History of Rule: Filed February 6, 1990. Amended: Filed June 24, 1993; Effective July 29, 1993. Amended: Filed July 27, 2000; effective October 1, 2000. Amended: Filed May 20, 2003; effective August 13, 2003; operative January 1, 2004.

535-X-12-.03 Certification

- (1) In addition to being registered or licensed with the Public Service Commission as a carrier, transporters of manufactured homes or manufactured buildings who are not under written contract with a licensed manufacturer or licensed retailer must be a certified installer with the Alabama Manufactured Housing Commission.
- (2) Each applicant for certification as an installer must complete the Commission application form and submit it to the Commission for approval along with a certification fee.
- (3) Each applicant shall satisfactorily complete an installer's course conducted by the Commission and pass a written or oral test prior to being issued a certification to install manufactured homes or manufactured buildings (modulars). The Commission will offer the course on various dates during the year at locations throughout the state. Each applicant, once certified, may thereafter renew their certification with Commission approval and the payment of an annual certification fee.
- (4) To be a certified installer a person, firm or corporation must maintain a minimum of one driver/installer who possesses a current Certificate of Training from the Alabama Manufactured Housing Commission.

- (5) Each certified installer shall be required to satisfactorily complete a refresher course on installation every two years after completion of the initial course.
- (6) Failure to satisfactorily complete, in a timely manner, any of the installer courses described herein may result in the revocation of an installer's certification.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-4A-4, and 24-6-4.

History of Rule: Filed February 6, 1990. Amended: Filed June 24, 1993; effective July 29, 1993. Amended: Filed July 27, 2000; effective October 1, 2000. Amended: Filed May 20, 2003; effective August 13, 2003; operative January 1, 2004.

535-X-12-.04 Installation of Manufactured Homes or Manufactured Buildings

- (1) No manufactured home or manufactured building shall be installed within this state unless such installation is done by a certified installer in accordance with the manufacturer's approved installation plan or the Commission's minimum standards. An officer or employee of the business who possesses a current certificate of training from the Commission must be present during the entire installation process. The owner or purchaser of a manufactured home or manufactured building is not allowed to install said home or building unless the owner or purchaser is a certified installer. If the manufacturer's plans are unavailable for installation, then the home must be installed according to minimum standards as established by the Commission or according to installation plans drawn and approved by a registered engineer.
- (2) All ground anchors and tiedown devices must be installed according to the anchor manufacturer's installation instructions for their respective ground anchors and tiedown devices. No ground anchor or tiedown device shall be used to anchor a manufactured home or manufactured building to the ground unless that ground anchor or tiedown device has received the Commission's approval. All manufacturers of ground anchors and tiedown devices must meet the Commission's requirements regarding anchor and tiedown manufacture and installation.
- (3) All installers shall purchase installation decals from the Commission and place said decal on each home or building so installed. This decal shall denote the date of installation and the name and certification number of the installer. Decal must be placed on the home or building immediately upon site location and prior to installation. Installation decals shall not be transferred. They must be used by the certified installer who purchased them.
- (4) No person, retailer, or manufacturer shall employ any person, firm, or corporation as an installer who is not certified as required by this Section. Violation of this section may be punished by the imposition of a fine against the violator in the amount of not more than \$500.00 for each home installed by an uncertified installer. Appeal of a decision pursuant to this paragraph shall be according to the appeal provisions of Section 8 of this Chapter.
- (5) Manufactured homes that do not have a HUD label indicating federal construction and safety standards were met during construction shall not be relocated from another state into Alabama to be used as a dwelling unit, unless the home was

a trade-in to a retailer licensed with the Alabama Manufactured Housing Commission.

- (6) Fire separation requirements contained in Paragraph 4-2.1 of NFPA 501A must be complied with when installing a manufactured home or manufactured building.
- (7) Transporters must have the proper number of escorts and individuals accompany them to aid in the safe transport of the home or building to its destination.
- (8) The transporter and/or business with which the transporter is employed will be responsible for all damages to the home or building while it is in the care, custody and/or control of said transporter.
- (9) Any home or building abandoned on a highway, parking lot or other location during a move shall be the sole responsibility of the transporter and/or the business with which the transporter is employed.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-4A-4, 24-5-31, 24-5-32, 24-6-4.

History of Rule: Filed February 6, 1990. Amended: Filed June 24, 1993; effective July 29, 1993. Amended: Filed July 27, 2000; effective October 1, 2000. Amended: Filed May 20, 2003; effective August 13, 2003; operative January 1, 2004.

535-X-12-.05 Reporting Requirements

- (1) All installers shall complete a monthly installation report on a form provided by the Commission and file it with the Commission no later than the tenth day of the month denoting the previous month's installations. This report shall include the name of the installer, the name and the address of the owners of the home (and location of home if different), and the name of the person or persons who hired the installer.
- (2) The installation report shall also include an affidavit stating that the installer has installed said home in accordance with the manufacturer's plans or the minimum Commission standards, or plans drawn and approved by a registered engineer which are in accordance with minimum Commission standards. If a home is installed in accordance with plans provided by an engineer, a copy of those plans must be attached to the report.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-5-31, 24-5-32, 24-6-4.

History of Rule: Filed February 6, 1990. **Amended:** Filed June 24, 1993; effective July 29, 1993. **Amended:** Filed July 27, 2000; effective October 1, 2000.

535-X-12-.06 Requirements of Manufacturer's Plans or Engineer's Plans

- (1) The manufacturer's installation manual must be approved and certified by the manufacturer's DAPIA or a third party agency approved by the Commission.
- (2) Manufacturers are required to furnish to the Commission their approved copy of a set-up manual for each model produced that is sold or set up within the State of Alabama.

(3) Each manufacturer's DAPIA or third party inspector must certify that each manual meets the State and Federal requirements for installation of the home.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-5-31, 24-5-32, 24-6-4.

History of Rule: Filed February 6, 1990. **Amended:** Filed June 24, 1993; effective July 29, 1993. **Amended:** Filed July 27, 2000; effective October 1,

2000.

535-X-12-.07 Inspection of Installation

The Commission may inspect, or cause to be inspected, the installation of all manufactured homes or manufactured buildings. The Commission shall prepare a written report of its inspection.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-5-31, 24-5-32, 24-6-4.

History of Rule: Filed February 6, 1990. **Amended:** Filed June 24, 1993; effective July 29, 1993. **Amended:** Filed July 27, 2000; effective October 1, 2000.

535-X-12-.08 Penalties and Appeals

- (1) The Commission may deny or revoke certification or re-certification, or impose a fine in an amount not to exceed \$500.00 for each violation, for failure to maintain certification requirements, for improper installations, for failure to meet Commission reporting requirements, or for such other reasons as the Commission may determine from time to time which may affect the public health, safety or welfare.
- (2) Each applicant who has been refused certification or re-certification, has been assessed a fine, or has had his certification revoked by the Commission's Administrator may appeal the decision by filing a request for a hearing in writing with the Commission at its office within ten days from receipt of the adverse notice. The Commission shall then notify the person within ten days from receipt of the notice of the date, time, and place of the hearing, which hearing shall not be more than 30 days from the date of the request for hearing. The hearing shall afford the applicant an opportunity to be heard. The Commission's Administrator or designee and the applicant will be allowed to present evidence. The applicant may be represented by a person of his or her own choosing. The hearing officer shall issue a written decision within ten days of the conclusion of the hearing.

Author: Jim Sloan

Statutory Authority: Code of Alabama, 1975, §§ 24-4A-3, 24-5-31, 24-5-32, 24-6-4.

History of Rule: Filed February 6, 1990. **Amended:** Filed June 24, 1993; effective July 29, 1993. **Amended:** Filed July 27, 2000; effective October 1,

2000.

EXHIBIT S:

NOTIFICATION OF SERVICE OF COMPLAINT ON JOHN MARK PARKER

AVS0702

ALABAMA JUDICIAL DATA CENTER LEE COUNTY SERVICE NOTICE

CV 2006 000106.00 JOHN V. DENSON II

IN THE CIRCUIT COURT OF

LEE

COUNTY

JENNIFER M GOLDEN VS DEER VALLEY HOMEBUILDERS, INC; TIMBERLINE HOMES D003

HOWARD G HOUSTON II P.O. BOX 1148

CASE NUMBER: CV 2006 000106 00

PARTY NUMBER: C001

WETUMPKA AL 36092

YOUR ATTORNEY CODE IS HOW015

THE SUMMONS AND COMPLAINT ON 02/23/2006 BY: CERTIFIED MAIL.

WAS SERVED ON PARKER JOHN MARK

DATE:03/01/2006 CLERK:CORINNE T. HURST 2311 GATEWAY DRIVE RM 104 OPELIKA AL 36801-6847 (334)737-3526

OPERATOR: STM PREPARED: 03/01/2006

EXHIBIT T:

LETTER DATED APRIL 13, 2006, FROM G. HOUSTON HOWARD II TO PROGRESSIVE

HOWARD, DUNN, HOWARD AND HOWARD

ATTORNEYS AT LAW
POST OFFICE BOX 1148
WETUMPKA, ALABAMA 36092

G. HOUSTON HOWARD II KEITH A. HOWARD

RETIRED
GEORGE P. HOWARD
WILLIAM B. DUNN
April 13, 2006

IO2 SOUTH BOUNDARY STREET WETUMPKA, ALABAMA 36092 TELEPHONE (334) 567-4356 FAX (334) 567-7080

TAX I.D.# 63-0441630

VIA CERTIFIED MAIL

Progressive Insurance Corporate Headquarters The Progressive Corporation 6300 Wilson Mills Road Mayfield Village, Ohio 44143

Re:

Jennifer Golden v. John Mark Parker

Circuit Court of Lee County

CV-2006-106

Dear Gentlemen:

Please find enclosed the Complaint, Interrogatories, and Request for Production of Documents that we filed in the above case on February 14, 3006. The records of the Alabama Manufactured Housing Commission reflect that you were or may be the general liability insurer for John Mark Parker at the time of the events described in the Complaint.

The records of the Circuit Clerk's Office in Lee County reflect that John Mark Parker, was served with our Complaint and discovery on February 23, 2006, and that he has failed to file a response.

Please be advised that unless a response is filed in court, and served on us, within thirty days of this date, we will ask the court to enter a default judgment against your insured. Upon receipt of such judgment, we will take appropriate action to collect that judgment from you under the terms of your liability policy.

This notice is being provided to you pursuant to the procedure authorized in *Safeway Insurance Company v. Thompson*, 688 So. 2d 271 (Ala. Civ. App. 1996), and *Webb v. Zurich Insurance Company*, 200 F.3d 759 n.1 (11th Cir. 2000). If we do not receive a pleading from you or your attorney within thirty days of this date, we may apply for entry of a default against your insured without further notice to you.

Yours very truly,

6. Houston Howard II

FOR HOWARD, DUNN, HOWARD & HOWARD

GHH/jkb

EXHIBIT

7 1464 1422	(Diames Mail Oi	ervice in MAIL REC MAIL REC ily; No Insuration of tion visit our nobsite FOR GOLO 2.31	at www.usps.com.		
0007	ern Receipt Fee (End ^e ment Required)	1.85	Postmark Here		
2570	Ricted Delivery Fee (Ersement Required) Ital Postage & Fees	\$ 6.S6			
Progressive Insurance Firet, Apt. No.: 6300 Wilson Mills Rd Wayfield Village Ohio 44143 FESTORING STREET ON SECTION STREET					

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: Progressive insurance Corporate Headquarters The Progressive Corporation 12300 witson Mills Road Mayfield Village, Chio 44143	A. Signature X
2. Article Number (Transfer from service label)	2510 0007 1464 1422
	17.775-35 3399 14-6-4-4-4-4-4-4-4-4-4-4-4-4-4-4-4-4-4-4

EXHIBIT U:

LETTER DATED APRIL 27, 2006, FROM PROGRESSIVE TO JMP ENTERPRISES, INC.

Filed 07/10/2020 Filed

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 27, 2006

JMP Enterprises, Inc. Attn.: John Parker P. O. Box 3501 Lagrange, Ga. 30241

Re:

Claim Number:

068235992

Date of Loss:

April 27, 2005

Policy Number:

08263817-0

Named Insured:

JMP Enterprises, Inc.

Dear Mr. Parker:

As you know, the above referenced claim was reported to Progressive Preferred Insurance Company. After initial review, it appears we have a potential coverage problem as this loss doesn't appear to meet the definition of a "accident" under your policy. Please refer to page 5 of your Progressive Policy/Contract #08263817-0 which states:

8. "Accident" means a sudden, unexpected and unintended event, or a continuous or repeated exposure to that event, that causes **bodily injury** or **property** damage and arises out of the ownership, maintenance or use of **your insured** Auto.

Therefore, it is for the above reason that the handling of this file will be conducted under a Reservation of Rights. No action taken to date, nor any action this company might take in the future to investigate, explore settlement, or defend a lawsuit arising out of the above mentioned claim shall be deemed to be an admission of coverage under Policy No. 08263817-0 issued to JMP Enterprises, Inc.. Progressive expressly reserves all rights of denial under the policy and in no way waives any of our rights. The investigation of this matter has been, and is being conducted, with full and complete reservation of rights afforded us under policy of insurance issued to JMP Enterprises, Inc.

Once we have had an opportunity to complete our investigation into this matter, we will be in touch to advise you of our position with regards to coverage. Should you have any questions for me, please don't hesitate to contact me at (334) 244-4516.



Sincerely,

Jerry Knight
Casualty Specialist
Progressive Preferred Insurance Company

EXHIBIT V:

MOTION TO AMEND FILED BY J. M. PARKER ON MAY 1, 2006

JENNIFER M. GOLDEN

Plaintiff,

Vs.

CASE NUMBER: CV-06-106

DEER VALLEY HOMEBUILDERS, *
INC., A CORPORATION TIMBERLINE *
HOMES, INC., A CORATION; *
JOHN MARK PARKER, AN INDIVIDUAL,*

Defendant.

MOTION TO AMEND

Comes Now, the Defendant, John Mark Parker, an Individual, by amended and removed from the complaint by substituting J.M.P. Enterprises Services, Inc. for Fictitious Defendant "A" as this is the true name of Defendant, John Mark Parker.

Respectfully submitted on this the _____ day of May, 2006.

FILED MAY 0 1 2006

IN OFFICE CORINNE T. HURST CIRCUIT CLERK Parker & Parker

J. M. Parker P. O. Box 3501 La Grange, Ga. 30241 706-594-1762

706-882-6243 (FAX)

Blumborg No. 5719

EXHIBIL

EXHIBIT W:

MOTION TO STAY FILED BY J. M. PARKER ON MAY 1, 2006

In The Circuit Court Of Lee County, Alabama

JENNIFER M. GOLDEN

Plaintiff,

Vs.

 ∇

CASE NUMBER: CV-06-106

DEER VALLEY HOMEBUILDERS,
INC., A CORPORATION TIMBERLINE
HOMES, INC., A CORATION;
JOHN MARK PARKER, AN INDIVIDUAL,*

Defendant.

Motion to stay

COMES NOW, the Defendants, (JOHN MARK PARKER) substituting J.M.P.

Enterprises Serves INC., file a Motion to Stay and to Compel Arbitration as with the binding agreement signed held with the Plaintiff.

Respectfully submitted on this the _____ day of May, 2006.

FILED MAY 0 1 2006

IN OFFICE CORINNE T. HURST CIRCUIT CLERK Parker & Parker

J. M. Parker
P. O. Box 3501
La Grange, Ga. 30241
706-594-1762

706-882-6243 (FAX)

EXHIBIT

EXHIBIT X:

PLAINTIFF'S FIRST AMENDED COMPLAINT IN STATE-COURT

IN THE CIRCUIT COURT OF LEE COUNTY

OCT 0 3 2006

JENNIFER M. GOLDEN, PLAINTIFF,

IN OFFICE CORINNE T. HURST CIRCUIT CLERK

v.

CASE NO. CV-2006-106

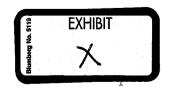
DEER VALLEY HOMEBUILDERS, INC., a CORPORATION; TIMBERLINE HOMES, INC., a corporation; JMP ENTERPRISE SERVICES, INC., a corporation, and JOHN MARK PARKER, an individual.

DEFENDANTS

PLAINTIFF'S FIRST AMENDED COMPLAINT

Comes now the plaintiff and adds JMP ENTERPRISE SERVICES, INC., a corporation, as a defendant and substitutes the following for the complaint originally filed in this action on February 14, 2006:

- 1. The plaintiff is an individual residing at 2999 Lee Road 17, Opelika, AL.
- 2. Timberline Homes, Inc., is a corporation engaged in the business of selling manufactured homes.
- 3. John Mark Parker is an individual engaged in the business of installing manufactured homes.
- 4. JMP Enterprise Services, Inc., is a Georgia corporation engaged in the business of installing manufactured homes. Its agent for service of process is John Mark Parker, 2205 Greenville Road, LaGrange, GA 30240.
- 5. Deer Valley Homebuilders, Inc., is a corporation engaged in the business of constructing manufactured homes.



Page 3 of 25

CLAIMS AGAINST DEER VALLEY COUNT I: BREACH OF EXPRESS WARRANTY

- On or about April 27, 2005, the plaintiff purchased a home manufactured by Deer Valley.
 - Deer Valley had manufactured the home specifically for the plaintiff.
 - 8. The plaintiff purchased the home for her personal, family, or household use.
- Deer Valley expressly warranted to the plaintiff by written warranty that the home was free from manufacturing defects in material or workmanship and that it would repair any such defects.
 - 10. The home contained substantial manufacturing defects.
- 11. The plaintiff gave Deer Valley notice of this breach of warranty as provided in the warranty or Deer Valley has waived any failure to give notice as provided in the warranty.
- 12. Deer Valley attempted to make repairs on some items, but has failed to repair the home properly and has failed to complete repairs. As a result, Deer Valley has breached the warranty, and the warranty has failed of its essential purpose.
- 13. As a proximate consequence of this defendant's breach of warranty, the plaintiff has suffered annoyance, inconvenience, and mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if the defendant had performed according to its warranty.

COUNT II: BREACH OF IMPLIED WARRANTY

- 14. On or about April 27, 2005, the plaintiff purchased a manufactured home constructed by Deer Valley.
 - 15. Deer Valley manufactured the home specifically for the plaintiff.

16. The plaintiff purchased the home for her personal, family, or household use.

Document 29-25

- 17. Pursuant to section 7-2-314 of the Alabama Code and section 2308(a) of title fifteen of the United States Code, the defendant impliedly warranted to the plaintiff that the home was merchantable, that it was habitable, that it was free from defects, and that it would meet the ordinary expectations of a consumer concerning a new product.
 - 18. The home contained substantial defects upon delivery to the plaintiff.
- 19. The plaintiff gave Deer Valley notice of this breach of warranty, and Deer Valley failed or refused to repair some defects and failed to repair properly other defects.
- 20. As a proximate consequence of Deer Valley's breach of warranty, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if Deer Valley had performed according to its warranty.

COUNT III: VIOLATION OF MAGNUSON MOSS ACT

- 21. The plaintiff incorporates herein the allegations of counts one and two.
- 22. This defendant's conduct described therein is a violation of the Magnuson Moss Warranty Act.

COUNT IV: NEGLIGENT TRIM OUT

- 23. Deer Valley undertook to trim out the plaintiff's home after the home was placed on her property.
 - ✓ 24. Deer Valley negligently performed this undertaking.
- 25. As a proximate consequence of Deer Valley's negligence, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly trimmed.

Page 5 of 25

COUNT V: WANTON TRIM OUT

Document 29-25

- 26. Deer Valley undertook to trim out the plaintiff's home after the home was placed on her property.
 - 27. Deer Valley wantonly performed its undertaking.
- 28. Deer Valley consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.
- 29. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.
- 30. As a proximate consequence of Deer Valley's wantonness, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly trimmed.

COUNT VI: NEGLIGENT REPAIR

- 31. Deer Valley undertook to repair certain defects in the plaintiff's home.
- / 32. Deer Valley negligently performed this undertaking.
- 33. As a proximate consequence of Deer Valley's negligence, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly repaired.

Page 6 of 25

COUNT VII: WANTON REPAIR

Document 29-25

- 34. Deer Valley undertook to repair certain defects in the plaintiff's home.
- 35. Deer Valley wantonly performed its undertaking.
- 36. Deer Valley consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.
- 37. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.
- 38. As a proximate consequence of Deer Valley's wantonness, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly repaired.

WHEREFORE, the plaintiff demands judgment against Deer Valley Homebuilders, Inc. for such compensatory and punitive damages, in excess of \$10,000, as a jury may award. The plaintiff further claims attorney's fees and costs under the Magnuson Moss Act.

Page 7 of 25

CLAIMS AGAINST TIMBERLINE COUNT VIII: BREACH OF WRITTEN WARRANTIES

Document 29-25

- 39. The plaintiff entered into the written contract with Timberline attached hereto as exhibit 1.
- 40. In the contract, Timberline "represent[ed] and warrant[ed] to Buyer that the entire property conforms to all building codes and restrictions that may be imposed by any governmental agency national, state or local."
- 41. Timberline further provided the plaintiff with the Warranty of Completion of Construction attached hereto as exhibit 2. In that document, Timberline warranted the "property against defects in equipment, material, or workmanship and materials supplied or performed by the Warrantor or any subcontractor or supplier at any tier "
- 42. Timberline further warranted that the two "sections [of the home] were properly joined and sealed." Exhibit 2.
- 43. Finally, Timberline provided the warranty of Plans, Specifications, and Site attached as exhibit 3. In that warranty, Timberline warranted, among other things, that the foundation complied with the "Permanent Foundations Guide for Manufactured Housing."
- 44. The parties closed the sale on April 27, 2005, and Timberline delivered the home to the plaintiff.
- 45. The home and property as delivered to the plaintiff did not comply with warranties described above.
- 46. The plaintiff thereafter gave this defendant notice of defects in the home and property, and Timberline took no action to correct the defects.

Page 8 of 25

47. As a proximate consequence of Timberline's breach of warranty, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if the defendant had performed according to its warranty.

COUNT IX: BREACH OF IMPLIED WARRANTY

- 48. On or about April 27, 2005, the plaintiff purchased from Timberline a home constructed by Deer Valley.
 - 49. The plaintiff purchased the home for her personal, family, or household use.
- 50. Pursuant to section 7-2-314 of the Alabama Code and section 2308(a) of title fifteen of the United States Code, Timberline impliedly warranted to the plaintiff that the home was merchantable, that it was habitable, that it was free from substantial defects, and that it would meet the ordinary expectations of a consumer concerning a new product.
 - 51. The home contained substantial defects.
- 52. The plaintiff gave Timberline notice of this breach of warranty, and it failed or refused to repair the defects.
- 53. As a proximate consequence of Timberline's breach of warranty, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if the defendant had performed according to its warranty.

COUNT X: BREACH OF IMPLIED WARRANTY

54. Prior to April 27, 2005, the plaintiff contracted to purchase from Timberline a home constructed by Deer Valley.

- 55. The plaintiff contracted to purchase the home for her personal, family, or household use.
- 56. As part of the purchase, Timberline agreed to deliver and set up the home and construct a brick foundation wall around the home.
- 57. Timberline impliedly warranted to the plaintiff that home would not be damaged in delivery, that the home would be properly set and installed, and the wall would be properly constructed.
- 58. The defendant breached such implied warranties in that it, or persons acting on its behalf, damaged the home in delivery, installation, and set up and failed to install properly the home.
- 59. The plaintiff gave Timberline notice of this breach of warranty, and it failed or refused to repair the defects.
- 60. As a proximate consequence of this defendant's breach of warranty, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been as warranted and if the defendant had performed according to its warranty.

COUNT XI: VIOLATION OF MAGNUSON MOSS ACT

- 61. The plaintiff incorporates herein the allegations of the last three counts.
- 62. The conduct of Timberline described therein constitutes a violation of the Magnuson Moss Act.

COUNT XII: NEGLIGENT DELIVERY AND INSTALLATION

63. Timberline contracted to deliver and install the plaintiff's home and construct a block foundation wall for the home.

- 64. Timberline's duty was a non-delegable duty.
- 65. Timberline, or persons acting on its behalf, undertook to deliver and install the home, and construct a block foundation wall for the home.
 - 66. These persons negligently performed their undertaking.
- 67. As a proximate consequence of their negligence, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly delivered and installed.

COUNT XIII: WANTON DELIVERY AND INSTALLATION

- 68. Timberline contracted to deliver and install the plaintiff's home and construct a block foundation wall for the home.
 - 69. Timberline's duty was a non-delegable duty.
- 70. Timberline, or persons acting on its behalf, undertook to deliver and install the home, and construct a block foundation wall for the home.
 - 71. These persons wantonly performed their undertaking.
- 72. This defendant consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiffs.
- 73. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of

the agent, servant, or employee was calculated to or did benefit the principal or employer.

74. As a proximate consequence of the wantonness of Timberline, the plaintiff has suffered annoyance, inconvenience, mental anguish, and the value of the home is less than it would have been if the home had been properly delivered and installed.

COUNT XIV: REFUND OF PAYMENTS

- 75. The plaintiff contracted with Timberline for the purchase and installation of a manufactured home and paid it \$10,000.00.
- 76. Section 24-5-32 of the Alabama Code provides, "All installers of manufactured homes and manufactured buildings must be certified by the commission to install such structures."
 - 77. Timberline was not certified to install manufactured homes.
- 78. Regulation 535-X-12.04 of the Alabama Manufactured Housing Commission provides, "No person, retailer, or manufacturer shall employ any person, firm, or corporation as an installer who is not certified as required "
- 79. Timberline contracted with John Mark Parker or JMP Enterprises to install the home.
 - 80. Neither Parker nor Timberline was certified to install manufactured homes.
- 81. The Alabama Manufactured Housing Commission inspected the installation on April 7, 2005, and determined that the home was not installed as required by its rules and regulations. Exhibit 4.
- 82. Section 24-5-33 of the Alabama Code provides, "It is a misdemeanor for any person to install, allow to be installed, occupy, or allow to be occupied, any

manufactured home . . . which is not in accordance with the uniform standards and the rules and regulations adopted and set forth by the commission"

- 83. On April 27, 2005, Timberline closed the sale to the plaintiff, and the plaintiff paid Timberline the additional sum of \$74,095.
- 84. Timberline's contracting to deliver and set up the plaintiff's home, when it was not licensed to do so, was contrary to law; Timberline's employment of an unlicensed contractor to install the home was contrary to law, and Timberline's closing the sale to the plaintiff without first correcting the defects in the home was contrary to law.
- 85. Allowing Timberline to retain the plaintiff's payments is contrary to the public policy of Alabama. Consequently, the plaintiff is entitled to a refund from Timberline in the amount of \$84,095.

COUNT XV: FRAUD BY FAILURE TO DISCLOSE

- 86. The plaintiff incorporates herein the allegations of the last count.
- 87. Timberline innocently, negligently, wantonly, or intentionally withheld, concealed, and failed to disclose to the plaintiffs certain material facts that it was under a duty to communicate to her based upon the particular facts of the case; namely, (a) that Parker and JMP were not licensed, as required by law, to install manufactured homes (b) that the home and the installation of the home did not comply with the regulations of the Alabama Manufactured Housing Commission; (c) that Alabama law prohibited occupancy of the home; and (d) federal law prohibited the defendant from closing the sale to the plaintiff.
- 88. In reasonable reliance on Timberline, the plaintiff paid Timberline for the home and made no objection to Parker's installing it.

- 89. The defendant consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.
- 90. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.
- 91. As a proximate consequence of Timberline's failure to disclose, the plaintiff has suffered annoyance, inconvenience, and mental anguish, and the value of the home is less than it otherwise would have been.

WHEREFORE, the plaintiff demand judgment against Timberline Homes, Inc., for such compensatory and punitive damages, in excess of \$10,000, as the arbitrator may award. The plaintiff further claims attorney's fees and costs under the Magnuson Moss Act.

CLAIMS AGAINST JOHN MARK PARKER and JMP ENTERPRISE COUNT XVI: NEGLIGENT DELIVERY AND INSTALLATION

- / 92. Parker and JMP, acting by and through their agents, servants, and employees, undertook to deliver and install the plaintiff's home.
 - 93. Parker and JMP negligently performed this undertaking.

94. As a proximate consequence of these defendants' negligence, the home was not properly installed, and it was damaged; the plaintiff has suffered annoyance, inconvenience, and mental anguish; and the value of the home is now less than it otherwise would have been.

COUNT XVII: WANTON DELIVERY AND INSTALLATION

- 95. Parker and JMP, acting by and through their agents, servants, and employees, undertook to deliver and install the plaintiff's home.
 - 96. This defendant wantonly performed this undertaking.
- 97. This defendant consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.
- 98. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant or employee, the plaintiff allege that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.
- 99. As a proximate consequence of these defendants' wantonness, the home was not properly installed and it was damaged; the plaintiff has suffered annoyance, inconvenience, and mental anguish; and the value of the home is less than it otherwise would have been.

COUNT XVIII: BREACH OF IMPLIED WARRANTY

- 100.Parker and JMP, acting by and through their agents, servants, and employees, undertook to deliver and install the plaintiff's home.
- 101. These defendants impliedly warranted to the plaintiff that the home would not be damaged during delivery and installation and would be properly set and installed.
- 102. Parker and JMP, acting by and through their agents, servants, and employees damaged the home in delivery and installation and failed to install the home properly.
- 103. The plaintiff gave these defendants' notice of the damage, and they failed to correct it.
- 104. As a proximate consequence of these defendants' breach of warranty, the home was damaged; the plaintiff has suffered annoyance, inconvenience, and mental anguish; and the value of the home is less than it otherwise would have been.

COUNT XIX: FRAUD BY FAILURE TO DISCLOSE

- 105. The plaintiff incorporates herein the allegations of last three counts.
- 106.Parker and JMP innocently, negligently, wantonly, or intentionally withheld, concealed, and failed to disclose to the plaintiff certain material facts that they were under a duty to communicate to the plaintiff based upon a confidential relationship between the parties or the particular facts of the case; namely, that they were not licensed, as required by law, to install manufactured homes.
- /107.In reasonable reliance on the defendants, the plaintiff paid Timberline for the home and made no objection to JMP's and Parker's installing it.
- 108. These defendants consciously and deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.

109. With respect to any conduct herein for which a principal or employer is to be held liable for the wrongful conduct of an agent, servant, or employee, the plaintiff alleges that the principal knew or should have known of the unfitness of the agent, servant, or employee, and employed him or continued to employ him or continued to use his services without proper instruction or with a disregard of the rights or safety of others; or authorized the wrongful conduct; or ratified the wrongful conduct; or the act of the agent, servant, or employee was calculated to or did benefit the principal or employer.

110.As a proximate consequence of these defendants' failure to disclose, the plaintiff has suffered annoyance, inconvenience, and mental anguish, and the value of the home is less than it otherwise would have been.

WHEREFORE, the plaintiff demands judgment against John Mark Parker and JMP Enterprise Services, Inc., a corporation, for such compensatory and punitive damages, in excess of \$10,000, as a jury may award.

HOWARD, DUNN, HOWARD & HOWARD,

Attorneys for Plaintiff

G. Houston Howard II (HOW15)

OF COUNSEL:

G. HOUSTON HOWARD II HOWARD, DUNN, HOWARD & HOWARD P. O. BOX 1148 WETUMPKA, AL 36092 (334) 567-4356

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES.

G. Houston Howard II

Filed 07/10/2007

G. Houston Howard II

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on Scott Hunt at P.O. Box 397, Hamilton, Alabama 35570; Joel A. Williams at 2500 Wachovia Tower, 420 North 20th Street, Birmingham, Alabama 35203-5203; and M. Warren Butler at P.O. Box 2727, Mobile, Alabama 36652-2727, and Jeffrey G. Hunter, P.O. Box 4128, Montgomery, AL 36103 by depositing a copy thereof in a United States mail receptacle, addressed to the last known address of such counsel, first class mail, postage prepaid, this the 29th day of September 2006.

COUNSEL (HOW015)

WHEN COMPLETED AND SIGNED BY BOTH PARTIES, THIS IS A LEGALLY BINDING CONTRACT, IF THIS CONTRACT IS NOT FULLY UNDER-STOOD, THE SERVICES OF A COMPETENT PROFESSIONAL SHOULD BE SOUGHT.

mimberline I	Homes, Inc.	here	by agrees to sell			
to Buyer . Demifer	Golden		, or Buyer's			
Nominee, the real property se	t forth below and all imp	rovements thereon (here	ein referred to as	7		
the Property), and Buyer agree	es to purchase said Prop	perty from the Seller on t	he terms and			
conditions set forth in this con-						
PROPERTY DESCRIPTION	ON: The Property is loca	ated.In Lee	County, and is commonly			
(city/state Opelika Ala	Dame Les B	2	· 36804 ,			
has approximate lot dimension	ns ofx	, and is legally de	scribed as			-
follows:						
(If the legal description is not incorporated herein afterward.	ncluded at the time of ex .)	ecution, it may be attact	ned to and			
PURCHASE PRICE: Buye	er warrant that buyer will	have sufficient funds at	closing, which			
when combined with the loan((8), if any, referenced ner	erty to be naid by Buyer	at closing is:			
purchase of Property. The purchase of Property.	thousand dollars	9 /12	Old, Edition			. N
METHOD OF DAVMENT	S: New Loan to be Obta	lined: This agreement I	s made 97% of the			
·	with an interest rate of no	eed on the Property. Th	ne loan is to be			
paid in consecutive monthly in years. "Ability to the loan described herein base The loan shall be of type lister agreement.	nstallments of principal a o Obtain" as used herein	means the buyer is que any and standard under	allfled to receive writing criteria.			
1) Loan Type: 2) Rate Type: F	FHA Fixed Rate Mortgage	9				
CLOSING COST AND D	to be used at the buy	era discretion to bey for	Closing cost.			
discount points, survey cost, close including escrows and plusurance premiums or escrotransaction.	Insurance related to the	property and if allowed by any additional fees, clo	by, other cost to sling costs,			
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PRORATED ITEMS; All remortgage insurance prémium mortgages shall be prorated a to an existing mortgage requires required to	is, fuel, prepaid service on the date of closing. Iring an escrow deposit for the made up to the time.	contracts, and interest or If Buyer is to accept the or taxes, insurance, and, of closing shall be made	r existing Property, subject for other items, all to the escrow		Blumberg No. 511	1
holder at Seller's expense and compensation to the Seller; it in the Total Purchase Price. A current as of the time of closing	d said escrow balance si being expressly underst Ill mortgage payments re To If the exact amount o	nall be assigned to the cood that said escrow ba equired of Seller to be multiple	lance is included ade shall be of be ascertained	ē .		
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Seller's Initial 4.C.Q.		Buyer's Initial		<u> </u>		
			I			

as specified @pose @ 000 0 000 3/4 WKW/TFM and buyer), this sate shall be dided 07/10/2007 only to the permitted exceptions set forth above acceptable to Buyer), this sate shall be dided 07/10/2007 and Buyer shall perform the agreements made in this contract, at the office of Buyer's Attorney, on or perforeDAY Of	Pag	ge 19	of 25
or on such other date as agreed upon by both parties in writing. If title evidence of survey revosi any defect Or condition which is not acceptable to Buyer, the Buyer shall, within lifteen ays, notify the Seiler of such title defects and Seiler agrees to use reasonable efforts to by such defects and shall have thirty (30) days to do so, in which case this sale shall be closed within ten (10) days after delivery of acceptable evidence to Buyer and Buyer's Attorney that such defects have been cured. Seller agrees to pay for and clear all delinquent taxes, liens,		<i>*</i>	
and other encumbrances, unless the parties otherwise agree. If Seller is unable to convey to Buyer a good and insurable title to the Property, the Buyer shall have the right to demand all sums deposited by Buyer and held by or for the Seller. At the same time, Buyer shall return to Seller all items, If any, received from Seller, whereupon all rights and liabilities of the parties to this contract shall cease. However, the Buyer shall have the right to accept such title as Seller may be able to convey and to close this sale upon the other terms as set forth in this contract.	•	,	
RISK OF LOSS OR DAMAGE: the Seller retains Risk of loss or damage to the Property by any cause until closing.			

CONDITION OF THE PROPERTY; Seller agrees to deliver the Property to Buyer in its present condition, ordinary wear and tear excepted, and further certifies and represents that Seller knows of no latent defect in the Property. All heating, cooling, plumbing, electrical, sanitary systems, and appliances shall be in good working order at the time of closing. Seller represents and warrants that the personal property conveyed with the premises shall Buyer inapect the same property and that no substitutions will be made without the Buyer's written consent. Buyer may also inspect or cause to be inspected the foundation, roof supports, or structural member of all improvements located upon the Property. If any such system, appliance, roof, foundation, or structural member shall be found defective, Buyer shall notify Seller at or before closing and Seller shall thereupon remedy the defect forthwith at his/her sole expense (in which case the time for closing shall be reasonably extended as necessary). If the costs of such repairs shall exceed 5% of the total purchase price. Seller may elect not to make such repairs and the Buyer may elect to take the Property in such defective condition and doublet 5% from the purchase price or Buyer may, at his/her option, elect to terminate this ct and receive the full refund of all deposits and other sums tendered hereunder. In on, Seller agrees to remove all debris from the Property by date of possession.

OCCUPANCY: Seller shall deliver possession to Buyer no later than the closing date unless otherwise stated herein:

ZONING: Unless the property is properly zoned for **Residential** use and there are no deed restrictions against such use at the time of closing, the Buyer shall have the right to terminate this contract and receive a full refund of all deposits made by Buyer hereunder.

LEGAL USE: Seller represents and warrants to Buyer that the entire property conforms to all building codes and restrictions that may be imposed by any governmental agency national, state, or local. Seller also warrants that there are no building code violations on the Property and that Seller has received no notice of any building code violations for the past ten years that have not been fully corrected.

LOCAL ORDINANCES: Seller shall procure for Buyer, at Seller's expense, all certificates of inspection, certificates of occupancy, or the like required under the terms of any local ordinance.

R.E.S.P.A. COMPLIANCE; Seller and Buyer agree to make all disclosures and do all things necessary to comply with the provisions of the Real-Estate Settlement Procedures Act of 1974 if it is applicable to this transaction.

REAL ESTATE CERTIFICATE: The Seller, Buyer and the Real Estate agent or broker involved in this sales transaction each certify that the terms of the sales contract are true to the best of their knowledge and belief and that any other agreement entered into by any of the print connection with the transaction is part of, or attached, to the sales agreement.

Seller's	Inittard. E. 2.	

Buyer's Initial

Page 20 of 25

Seller's Initian L.2	:3 <u>ENUE U</u> ≟_	Buyer's Initis		
Witness whereof, the parties	signed their names	on the dates in	the year set i	onth below.
Buyer Signature: \\ \(\text{MM} \)	Raham			
Print Name: Senni Fer	Go lde	<u> </u>		
85N 421 \ 25 \	<u> 7874 _</u>			
Buyer Signature:				
BelockName	•			, A
Print Name:				
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Print Name: A. C. 2				
รธท		* -		·
Seller Signature:				
Print Name;				
SSN		-	*	
This offer to Purc	hase said Pro	perty is A(CEPTE	D this
Da	y of		20	
Time	·;	<i>PM or .</i>	, 4M	

Case 3:06-cv-00934-WKW-TFM

Filed 07/10/2007

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Jan. 13. 2005 11:46AM

ornBank Mortgage

No. 3430 P. 6

Warranty of Completion of Construction

U.S. Department of Housing and Urben Development Office of Housing Federal Housing Commissioner

OMB Approval No. 2502-0059 (Expires 9/30/2007)

This information is required to obtain a HUD-insured ships family mongage. Public reporting burden for this collection of information is settimated to availage 3 initiates per response, including the time for reviewing instructions, searching extends data sources, gathering and maintaining the data needed, and completing and reviewing line obligation of information. This agancy may not conduct or sponsor, and you are not required to respond to, a collection

AuburgBank Mortgage 3206 20th Ave Valley AL 36854	Namels) of Purchased/Owner Jennifer Golden
FMA/VA Cuse Number	Property Address
011-5362150	2999 Lee Road 117 Opsiika AL 36804

For good and valuable consideration, and in accordance with Section 801 of the Housing Act of 1954, and Public Law 85-857 (38 U.S.C. 3705), the undersigned Warrantor hereby warrants to the Purchaser(z) or Owner(z) identified in the caption hereof, and to maken successors or manaferees, that:

The dwelling tuested on the property identified in the caption hereof is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes and variations therein) which have been approved in writing by the Federal Housing Commissioner or the Secretary of Veterans Affairs on which the Federal Housing Commissioner or the Secretary of Veterans Affairs based the valuation of the dwelling: Provided, however, That this warranty shall apply only to such instances of substantial nonconformity as to which the Purchaser(s)/ Owner(s) or his/her (their) successors or transferees shall have given written notice to the Warrantor at any time or times within one year from the date of original conveyance of little to such Purchasers(s)/Owner(s) or the date of initial occupancy, whichever first occurs: Provided further, however, That in the event (1) the Putchaset (*)/Owner(s) acquired title to the captioned property prior to the completion of construction of the dwelling thereon, such notice of nonconformity to the Warrantor may be given any time or times within one year from the date of completion or initial occupancy of such dwelling, whichever first occurs, or (2) where it has been necessary to postpone improvements such notice of nonconformity to the Warrantor as to such incomplete items may be given at any time or times within one your from the date of full completion of each of such items.

The turm "dwelling" as used herein shall be deemed to include all improvements or appurtenances set forth in the plans and specifications upon which the Federal Housing Commissioner or the Secretary of Veterans Affairs has based the valuation of the property, excepting those constructed by a

The undersigned Warrantor further warrants to the Purchaser(s)/ Owner(s) or his/her (their) successors or transferest, the property against defects in equipment, material, or workmanship and materials supplied or performed by the Warrantor or any subcontractor or supplier at any tier resulting in noncompliance with standards of quality as measured by screptable trade practices. This warranty shall continue for a period of one year from the date of original conveyance of title to such Purchaser(s) or from the date of full completion of each of any items completed after conveyance of title. The Warranter shall remedy, at the Warranter's expense, any defect(s) of equipment, material, or workmanship furnished by the Warranter. Warranter shall rextore any work damaged in fulfilling the terms and conditions of this warranty.

If a manufactured (mobile) home was erected on this property, the Warrantor further warrants that (1) the property (other than the manufactured unit itself) complies with the submitted construction exhibits; (2) the manufactured home sualisined no hidden damage during transportation and crection; and (3) if the home was manufactured in separate sections, the sections were properly joined and sealed.

Manufacturers Name, Address & Phone Number (Include Area Oods) Timberline Homes 1809 Columbus Par Rway Opelike AL.

This warranty shall be in addition to, and not in derogation of, all other rights and privileges which such Purchaser(a)! Owner(a) or his/her (their) successors or transferees may have under any other law or instrument, and shall survive the conveyance of title, delivery of possession of the property, or other final settlement made by the Purchaser(s)/ Owner(s), and theil be binding on the Warrantor notwithstanding any provision to the contrary contained in the contract of purchase or other writing executed by the Purchaser(s)/ Owner(s) or his/her (their) successors or transferous horatofore or contemporaneously with the execution of this agreement or prior to final settlement.

This warranty is executed for the purpose of inducing the Federal Housing Commissioner or the Secretary of Veterans Affairs to make, to guarantoe or to insure a morigage on the captioned property, and the person signing for the Warrantor represents and certifies that he/she is authorized to execute the same by the warranter and by his/her signature the Warranter is duly bound under the terms and conditions of said warranty. The PHA Commissioner or the Secretary of Veterans' Affairs reserves the right to make a final determination as to whether a defect exists a

Warrentor's Title		Purchasaria) posnowiadament	builder must remedy the defect
Obnesis	D41# (mm/dd/yyyy)	Signature of Polishansing and on one	Dese (minyadyywy)
Builders Name and Address	11 8 04	Signature of Purchaser	Date (mm/dd/yyyy)
Timber live Homes		Builder's Phone Number (Include Area Code)	1
Polling AL 76604		334749-6538	
Direction			

Purchaser Note: Any notice of nonconformity must be dalivared to the warrantor within the period or pariode set forth above. Warning: HUD will prosecute take olding and statements. Conviolion may result in oriminal analor divil pensities. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802) Provide completed copies of this warranty to both the homeouper and the builder, at crosing. Include a copy of oils warranty in the case binder when sent to HUD.

Pravious editions are obsolete. Combines pravious HUD-92544-A

VA form 25-1859

term HUD-92544 (8/82) rei. Handbook 4145,1



Jan. 13. 2005 1.1:45AM

nBank Mortgage

No. 3430

Bullder's Cartification of Plans, Specifications, & Site

U.S. Department of Housing and Urban Development Office of Housing

OMB Approval No. 2502-0498 (exp. 09/30/2009)

Feder	al Housing Commissioner			
Properly Address (elres), chy, Blate, & zip code)	Col	Sivision Name		
1995 Lee Road 117	Out	SOME USING		
Opelika Al 36804				
	:	•		
Mongages's (Lender's) Name & Address (this is the lender who closed the fo	un) FH	Case Number		
Auburnbank Mortgage		011-5362	3.50	
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		*** ***	626	
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 Provide the community number and date of the Flood insur 	ance Rate Man / FIRM) used to doe	rene a f	Y58	x N
your arrawer. Community Number Map Dat	6			
2) is the community participating in the National Flood insura	nos Program and in good standing	7	Yes	x N
3) Il "Yea" (O la, store, stlach:	and a second second			E 11
(I) a Letter of Map Amendment (LOMA) br:				
(II) a Letter of Map Revision (LOMR) or				
(組) a aigned Elevation Carlificate documenting that the lower CFR 200.926b(e)(4).	enfloor (including basement) is built	in compliance with 24		
b. Noise. is the properly located within 1000 feet of a highway,	freeway, or heavily traveled road?		Yes	
Final Good (and b) & tellional			Y68	× N
Within one mile of a givit sirfield or 5 miles of a military sirfield	የ		Yes	
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" ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' '	li e e e e e e e e e e e e e e e e e e e			X N
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			Yes	SE NO
e. Toxic Waste Hazards, is properly within 3000 feet of a dump or lan	dill or a sile on an EPA Superfund (NE	L) list or squivalent State (let?	Yes	X No
			h	mu.
(1) Does the site have any rock formations, high ground water (2) Does the site have unstable salls (expensive collection)	levels, insdequate surface drainage	s, springs, sinkholes, etc.?	Y09	X No
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If "You," will foundatione, slabs, or flatwork rest on the fill?			Yos	■ No
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If you marked "Yes" to any of the above questions in f, please att reports, designs, and/or certifications showing compilance with improvements and the health and sefety of the occupants. References	or to HUD Handbook 4145.1 and Eu	actualized equadrage of the		_
implete this section whon seeking slightlift for Maximum I am	to M. I. W. I. W.	3 must be checked		
Toolight A state of the state o	for Home Mongage Insurance, Includ	ling Appendix 8. Site Grading	& Drainage G	widelige
	·			
CABO One- and Ywo-Family Dwelling Code, as listed in 24 C CABO 1992 Model Energy Code	FR 200.826b.			
x Electrical Code for One- and Two Europe Ductions on Bread				
Westings, so ligion	in 24 CFR 200.9265. (ourrent editio	n; NFPA 70A/1964),		
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imberline Homes Inc.	10 m. Name & Tile of Builder or f	Builder's Agent (lype or print)		
Street Address	H.C. Lee	- G.M.	11 ?	کی کے
909 Golumbus Parkway	by Signature of Builder or Build	def's Agent	Date (mnvdd/	(עעעע)
City, State, & Zip Code	9-1-200			
milima Al 16804	o. Teleprione Number (includ			
lous editions are obsolets.	1 of 9	334-745-6538		

Page 1 of 3

ref. Handbook 4146.1

form HUD-92541 (4/2001)

BOB RILEY



JIM SLOAN

ALABAMA MANUFACTURED HOUSING COMMISSION

350 SOUTH DECATUR STREET • MONTGOMERY, ALABAMA 36104 (334) 242-4036 • FAX (334) 240-3178 WWW.AMHC.STATE.AL.US

May 5, 2005

1789 John Mark Parker P.O. Box 3501 LaGrange, GA 30241

Dear Mr. Parker:

Your Installer Certification was closed on 12/31/04.

The Set-Up Inspection Report pertaining to the home of Jennifer Golden, located at 2999 Lee Rd 117 Opelika, Alabama 36804 (32x76 HUD#TRA546306 & 307) is enclosed for your information and immediate corrective action.

Alabama law requires anyone who installs a manufactured home to be certified with the Alabama Manufactured Housing Commission (AMHC). It also requires anyone who transports a manufactured home to be a certified installer unless they are under written contract with a licensed manufacturer or licensed retailer with the Alabama Manufactured Housing Commission. Our records indicate that you are not a certified installer. Therefore, you must contract with a certified installer to install this home correctly within 30 days of the date of this letter, in compliance with the AMHC law, rules and regulations.

You are assessed fines in the amount of \$700.00 for this violation (\$500.00, uncertified installer; \$100.00, no installer decal; \$100.00, no locator). This fine must be remitted to the above address by check or money order by Monday, June 5, 2005. If you do not comply within the allotted time, you case may be referred for prosecution.

You may appeal this decision by filing a written request for a hearing at this office within ten (10) days from your receipt of this letter. If you have any questions you should contact Mr. Lee Pamplin, ext. 23 or me at ext. 25.

You are advised to reimburse the homeowner any payments you received from him/her for work you were not certified to do.

Sincerely

Jim Sloan Administrator

JBS/lp

cc: Jennifer Golden 2999 Lee Rd 117

Opelika, Alabama 36804

cc: AMHC Inspector

Blumbag No. 5119
EXHIBIT

Page 25 of 25

SET-UP INSPECTION REPORT

OCATOR Y_N&	SET OF INGLECT	TON REPORT	DATE 4/2/05
INSTALLER JOHN MARK PARKER PO BOY 3501 LA GRANGE, G-A 30241 CERTIFICATION # /789 INSPECTED BY: MANGOM, SMANUFACTURER: 1/2606 HUD LABEL # TRA 546306 SERIAL # CB77 SHB INSIGNIA # MA	DECAL # None 5 # 18 Uhy 125 TRA 546 307	Jennifer (2999 (re Opelika, COUNTY (zz YEAR: NEW SIZE OF UNIT (RESALE DECAL #	WNER Solden Rd 117 HL 36804 X USED SZX76 MA e(line
CORRECTION 1. FIRE SEPARATION 2. SITE PREPARATION 3. PIERS ALIGNMENT CAPS/PLATES SHIMS MARRIAGE WALL PERIMETER PIERS CONSTRUCTION 38" PIER HEIGHT 4. TYPE ANCHOR USED DEPTH SPACING STABILIZER PLATE VERTICAL TIES VERT	X 2 3 3 4 4 5 5 5 5 6 5 6 5 6 5 6 5 6 6 6 6 6 6	COMMINATED STATE OF STATE OF STATE OF MICHOLOGY IN MICHAEL STATE OF MICHAE	entre home, we full sized included to anchor houd rests such instabled per entreal the tales rers rustruction not to exceed 45
TALLER MUST: (1) CERTIFY THAT (2) RETURNING IT TO THIS OFFICE DATE S	IGNATURE	EN MADE BY SIGNING THE	S FORM

EXHIBIT Y:

ANSWER OF PARKER AND JMP ENTERPRISES TO GOLDEN'S FIRST AMENDED COMPLAINT

IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

JENNIFER M. GOLDEN,

*

Plaintiff,

<

VS.

CIVIL ACTION NO.: CV-06-106

DEER VALLEY HOMEBUILDERS, INC., A Corporation; TIMBERLINE HOMES, INC., A Corporation; And JOHN MARK PARKER, An Individual.

*

Defendants.

ANSWER OF JOHN MARK PARKER AND JMP ENTERPRISE SERVICES, INC., TO PLAINTIFF'S FIRST AMENDED COMPLAINT

COME NOW Defendants John Mark Parker and JMP Enterprise Services, Inc., in answer to the Plaintiff's Amended Complaint, re-adopts its Answer to the Plaintiff's original Complaint as if fully set forth herein and in addition, states as follows:

- 1. John Mark Parker and JMP Enterprise Services, Inc., deny the material averments of the Complaint and state that they are not guilty of any actual conduct or breach for which relief maybe granted against John Mark Parker and/or JMP Enterprise Services, Inc.
- 2. John Mark Parker and JMP Enterprise Services, Inc., deny the alleged negligent delivery and installation as alleged in Count XVI of the Plaintiff's Amended Complaint and deny the Plaintiff's claims for damages as set forth therein.
- 3. John Mark Parker and JMP Enterprise Services, Inc., deny the alleged wanton,



Page 3 of 5

- delivery and installation as alleged in Count XVII of the Plaintiff's Amended Complaint and deny the Plaintiff's claims for damages as set forth therein.
- 4. John Mark Parker and JMP Enterprise Services, Inc., deny the alleged breach of implied warranty as alleged in Count XVIII of the Plaintiff's Amended Complaint.
- 5. John Mark Parker and JMP Enterprise Services, Inc., did not breach any alleged implied warranty to the Plaintiff and the Plaintiff is not entitled to any recovery against John Mark Parker and JMP Enterprise Services, Inc.
- 6. John Mark Parker and JMP Enterprise Services, Inc., deny the alleged fraud by failure to disclose as alleged in Count XIX of the Plaintiff's Amended Complaint and deny the Plaintiff's claims for damages as set forth therein.
- 7. This Defendant did not proximately cause the Plaintiff's alleged damages.
- 8. This Defendant affirmatively avers that arbitration may be proper for this case, and this Defendant hereby asserts the right to arbitration and preserves any claim for relief by arbitration in this case.
- 9. This Defendant affirmatively avers intervening or superseding causation.
- 10. This Defendant affirmatively avers contributory negligence.
- 11. This Defendant adopts in full all defenses raised by or available to the Co-Defendants as if set for th in full herein.
- This Defendant reserves the right to supplement this answer in the future. 12.

- 13. This Defendant pleads improper venue.
- 14. This Defendant pleads lack of jurisdiction.
- 15. This Defendant pleads the general issue.

s/Jeffrey G. Hunter
JEFFREY G. HUNTER (HUN028)
ALEX L. HOLTSFORD, JR. (HOLO48)
Attorneys For Defendants

OF COUNSEL:
NIX HOLTSFORD GILLILAND
HIGGINS & HITSON, P.C.
Post Office Box 4128
Montgomery, Alabama 36103-4128
Telephone: (334) 215-8585
Facsimile: (334) 215-7101

I hereby certify that I have this day mailed, postage prepaid, an exact copy of the foregoing document to:

G. Houston Howard, II Attorney For Plaintiff HOWARD, DUNN, HOWARD & HOWARD Post Office Box 1148 Wetumpka, Alabama 36092

Warren Butler Lyons, Pipes & Cook Post Office Box 2727 Mobile, Alabama 36652-2727

Joel A. Williams SADLER SULLIVAN, P.C. Suite 2500 420 N. 20th Street Birmingham, Alabama 35203-5203

This the 27th day of November, 2006.

s/Jeffrey G. Hunter OF COUNSEL

EXHIBIT Z:

GOLDEN'S LETTER OF JANUARY 11, 2006, TO PARKER AND RETURN RECEIPT CARD SIGNED BY JILL PARKER

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature Agent Addressee B. Beceived by (Rinted Name) C. Date of Delivery
Article Addressed to:	D. is delivery address different from item 1? \(\bar\) Yes If YES, enter delivery address below: \(\bar\) \(\bar\) No
Mr. John Parker P.O. Box 3501	(6) (1) (2) (3) (4) (4) (4) (4) (4) (4) (4) (4) (4) (4
La Girange, Georgia 30241	3. Service Type Certified Mail
2. Article Number 7004	
(Transfer from service label)	2890 0003 6846 9406
PS Form 3811, February 2004 Domestic Re	turn Receipt 102595-02-M-1540



Dear Deer Valley, Timberline, and Mr. Parker

I purchased a home from Timberline's

Opelitha office in April 2005.

Timberline sold me the home and Deer

Valley Manufactured the home. Mr. Parker

was the person who installed it. I was

under the impression that Mr. Parker

was certified and installed it correctly.

I received a letter stating that it

is not set up correctly and I have

a number of problems with the

home that need to be corrected.

I The two sections of the home are not joined right. There is a gap between the sections and the home is not screwed together on the marriage line.

2. The floor joists are separated from the parimeter joists.

3. The piers for the home are not constructed right, as required by the regulations.

4. The tie downs are not installed right, as required by the regulations.



1/11/06

- 5. The bottom board is cut and not sealed.
- 6. The steps are not installed right.
- 7. The concrete wall is not constructed right.
- 8. The siding on the outside is wary and bowed.
- 9. The outside trim looks bod.
- 10. The roof has potches all over it.
- 11. The shingles on the edge of the roof are ragged.
- 12. The metal collar around the fireplace is not scaled right.
- 13. most of the inside walls are wany and bowed.
- 14. The inside drywall finish is rough and needs sanding and repainting.
- 15. The crown molding throughout the house is wary and bowed and there are gap's between it and the ceiling
- analdona sook and the education

- 17. There is a gop at the top of the living room door and at the top of the utility room door. This lets air come in.
- 18. On the interior doors, there are large gaps between the doors and the door casings.
- 19. Door casings are cracked, out of square, and bowed
- 20. Tile in the both room is loose and improperly. installed
- 21. Cabinet doors in the Kitchen are not installed at the same height.
- 22. Throughout the home, switch plates and wall outlets are not level and square.
- 23 we still have never received the light globes or fixtures for the bathrooms.
- 24. I am sure there are some problems that I have missed, and when some one-comes out, I will point them out to the repair person

I would appreciate if these problems could be corrected in the next two weeks. Please call one day before you come so we can make arrangements for someone to be at home.

Thank You

Jenn: Fer Golden

2999 Lee Rd 117

pel: Ka, AL 36804

334) 742-0262

Jennifer Bolden

EXHIBIT AA:

EXCERPTS FROM DEPOSITION OF JOHN MARK PARKER

OHIGINAL

1	IN THE CIRCUIT COURT
2	OF
3	LEE COUNTY, ALABAMA
4	
5	JENNIFER M. GOLDEN,
6	Plaintiff,
7	vs. CASE NO.: CV-2006-106
8	DEER VALLEY HOMEBUILDERS, INC., et al.,
9	Defendants.
10	Describer 1
11	* * * * * * * *
12	
13	VIDEOTAPED DEPOSITION OF JOHN MARK
14	PARKER, taken pursuant to stipulation and
15	agreement before Sherry Mack, Court Reporter and
16	Commissioner for the State of Alabama at Large,
17	in the Law Offices of Nix, Holtsford, Gilliland,
18	Higgins & Hitson, 4001 Carmichael Road,
19	Suite 300, Montgomery, Alabama, on Tuesday,
20	October 24, 2006, commencing at approximately
21	11:09 a.m.
22	
23	* * * * * * * *



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- A. I mean, if I had a problem with something or they had a problem without payment, University Agency would call me. And I'd take care of it for them.
- Q. Have you ever had any written contract with Timberline Homes?
- A. Nope. Verbal.
- O. What sort of verbal contract --
- A. I wasn't -- I wasn't --
- Q. Let me -- I'm sorry. Let me rephrase that.

 Have you had a general contract with

 Timberline that covered multiple homes or you
 just had contracts to deliver and install
 particular homes?
- A. You have to rephrase that. I --
- Q. You know, if Timberline asked you to install, for instance, the Golden home and you reach an agreement, I would call that a contract related to the particular home. If you had an agreement with Timberline Homes that you would deliver all of their homes at a certain price per home, I would call that a general contract.

- 74 0. What conversations did you have with Randall Bracknell before delivery? 2 Things like I had a SouthernLINC radio and he 3 Α. had one also. He would call and say, Mark, 4 is my house in? No, not yet. When do you 5 think it's coming? I don't know. You have 6 to call Mike Morris. He would call Mike 7 8 Morris. Mike Morris would have to call somebody like Deer Valley and figure out. 9 The house was three weeks late if I remember 10 correctly. 11 Q. 13
 - So did your conversations with Randall before delivery just have to do with the timing of delivery, when it was going to be delivered?
 - Uh-huh. And he just -- whatever you Α. type -- just a whatever-type quy. You know, one of the deals, hey, man, what's going on type deal; where are y'all working at today?
 - Did you make any visits out to the site Q. before the day you delivered the home?
 - Yeah. Α.

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- How many visits did you make to the site? Q.
- Probably two. Α.

1	Q.	And do you remember when the first one was,
2		how long before delivery of the home?
3	A.	No. I don't remember. It was definitely a
4		week or two. Three weeks.
5	Q.	Couple of weeks?
6	A.	Yes, sir.
7	Q.	And what did you do on that first visit?
8	A.	Looked at where he had someone else grade the
9		lot and see what it looked like.
10	Q.	And was at that point, was the site
11		preparation satisfactory?
12	A.	No.
13	Q.	What was not satisfactory?
14	A.	I told him he had water either running
15		towards the house or running where the pad
16		was located. He was going to have to make
17		sure that he diverted that water before we
18		could deliver it. It was too wet to deliver,
19		anyway.
20	Q.	Now, at that time, were you familiar with the
21		Alabama Regulations concerning set-up of
22		homes?
23	Α.	Uh-huh.

1	A.	It was still wet underneath the ground. So
2		we got stuck with the truck. We had to get a
3		dozer. I called Mike Morris and asked
4		permission to get one because they have to
5		pay for it.
6	Q.	And who did you get a dozer from?
7	A.	Either Best Rental or RSC Rental or United
8		Rental, one of the three. I used all three
9		of them. I'm not sure which one I used.
10	Q.	I've got a which half of the home did you
11		get stuck or did you get both halves stuck?
12	A.	Both halves.
13	Q.	Which half which half of the home did you
14		try to put on the lot first?
15	A.	Back half. No. Wait a minute. It may have
16		been the the front half.
17	Q.	When you got there to put the home on the
18		lot, was the site preparation satisfactory?
19	A.	I mean, yeah, the lot looked good.
20.	Q.	And by that, I mean the place where the
21		mobile home was going to sit.
22	A.	Yes, sir.
23	Q.	Had the drainage problems you brought to

1		it.
2	A.	All the around. Just make the mark all the
3		way around.
4	Q.	Okay. So did you bring bring the home in
5		on the road that's shown on Exhibit #501?
6	A.	As far as I know. I don't know if that's
7		exactly the road number or not. I assume it
8		is.
9	Q.	I mean, there was a little road there through
10		the woods, wasn't it?
11	A.	Yeah. I mean
12	Q.	And did you did you bring it down the road
13		as opposed to coming through some other way?
14	A.	No. I brung it down the driveway that was
15		the existing driveway that was there for the
16		mother-in-law is what I thought.
17	Q.	And that's you got stuck coming in on that
18		driveway?
19	A.	That's right.
20	Q.	And you had to you said you had to pull it
21		with a dozer?
22	A.	Well, a toter truck normally is a single-axle
23 -		truck.

U. ies, sir.	Q.	Yes,	sir.
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- A. And we backed off the road. And as soon as those tires hit, whatever you want to call it, the gravel drive or whatever, it started to sink because it had been wet. And it just spin, but it wasn't hurting nothing. We just decided to get a dozer and get our airplane mats from the shop, brung them there, put the house on top of the mats, took the dozer and eased it right on in there.
- Q. Okay. And so did you hook the dozer up to the front of the toter?
- A. Yes, sir.
- Q. And did you pull -- did you pull at an angle on the toter, or did you pull directly in a straight line?
- A. Just directly.
- Q. In a straight line?
- A. Uh-huh.
- Q. And did it take you about the same amount of time to unstick each half?
- A. I -- I imagine. I don't remember.
- Q. What is an airplane mat?

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- 22

- Q. I mean the whole thing.
- A. Probably four to five days, I'm not sure on that exact date. Probably four to five days from the time started until the time ended.
- Q. That's what I mean.
- A. I don't think we did it all in one day
 because, if I'm not mistaken, we got the
 house in there. And then it rained again.
 We hadn't done anything to the set-up, and
 then we came back and set the house up.
- Q. Do you have -- do you know what day or when you did this installation?
- A. No.
- Q. This exhibit we've marked as Exhibit #435 is a -- has a set-up inspection report attached to it. It's either dated April the 2nd or the 7th. Do you see that at the top right side?
- A. Uh-huh.
- Q. Is that a yes?
- A. Yes, sir.
- Q. Did you ever receive that set-up inspection report on this home?

1		went to see about doing it, and they said
2		they couldn't come over there unless you were
3		there.
4	Q.	Who said that?
5	A.	Jennifer Golden.
6	Q.	And was that after the lawsuit was filed?
7	A.	I don't know. I never seen the lawsuit.
8	Q.	Well, did you get a letter from Jennifer
9		Golden?
10	A.	I didn't.
11	Q.	You didn't?
12	A.	I didn't.
13	Q.	Let me show you Exhibit #442.
14	A.	Okay.
15	Q.	This is a letter dated January the 11th,
16		2006. Did you receive that?
17	A.	I didn't.
18	Q.	Is your address Post Office Box 3501,
19		LaGrange, Georgia?
20	A.	Yeah.
21	Q.	Is that do you normally get mail addressed
22		to that address?
2.3	A.	Normally, yeah.

	ı	
1		anything without seeing her lawyer. I didn't
2		know it was a lawsuit until that time. And
3		then I called Mike Morris back.
4	Q.	What conversation did you have with him when
5		you called him back?
6	A.	He ain't heard nothing about it yet being a
7		lawsuit.
-8	Q.	Mr. Parker, you know you're in a lawsuit now,
9		correct?
10	A.	Oh, yeah.
11	Q.	And before today, you knew that Jennifer
12		Golden was saying that she had mailed you a
13		letter, correct?
14	A.	She ain't never said nothing about mailing me
15		a letter ever.
16	Q.	And it's your testimony under oath you've
17		never you never saw this letter from
18		Jennifer Golden; is that right?
19	A.	I've never seen it.
20	Q.	And you never had any conversations with your
21		wife about whether she signed for a letter
22		addressed to you?
23	A.	Nope.

EXHIBIT BB:

EXCERPTS FROM DEPOSITION OF RANDALL BRACKNELL

Page 1

IN THE CIRCUIT COURT OF
LEE COUNTY, ALABAMA

CIVIL ACTION NUMBER
CV-2006-106

JENNIFER M. GOLDEN,
Plaintiff,

VS.

DEER VALLEY HOMEBUILDERS, INC., et al., Defendants.

DEPOSITION TESTIMONY OF:

RANDALL BRACKNELL

September 18, 2006 3:35 p.m.

COURT REPORTER:

GWENDOLYN P. TIMBIE, CSR

EXHIBIT BB



Page 124

1	possible?
2	A It was just too wet trying to
3	get in there.
4	Q So they would have had to come
5	back another time?
6	A Right. And Mark said he could
7	back up. He had a dozer he had been
8	because he had done set five trailers that
9	week, I think he said, with a dozer
10	because of the weather. And that's why he
11	continued on and set it.
12	Q You told me Mark spent Mark
13	and his crew spent about a week and a half
14	off and on out there?
15	A I say two two weeks it took
16	them to
17	Q To set it up?
18	A But it wasn't every day, you
19	know, because he had so much going on.
20	Q How many days was he actually
21	on site, setting it up? Him or his crew.
22	A I'd figure six.
23	Q When Mark called you after you

EXHIBIT CC:

EXCERPTS FROM DEPOSITION OF JENNIFER GOLDEN

Page 1

IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

CIVIL ACTION NUMBER
CV-2006-106

JENNIFER M. GOLDEN,
Plaintiff,

VS.

DEER VALLEY HOMEBUILDERS, INC., et al., Defendants.

DEPOSITION TESTIMONY OF:

JENNIFER M. GOLDEN

September 18, 2006 10:10 a.m.

COURT REPORTER:

GWENDOLYN P. TIMBIE, CSR

EXHIBIT

Page 195

-		- 490 10
1	your house?	
2	А	No.
3	Q	All right. You got a letter
4	dated May 5	, 2005, from the Alabama
5	Manufacture	d Housing Commission; correct?
6	A	Correct.
7	Q	And that's it was a letter
8	directed to	Mr. Parker; correct?
9	A	Right.
10	Q	And it's got you down here at
11	the bottom	cc'ed; is that right?
12	A	Yes.
13	Q	And that's your address down
14	there; corre	_
15	A	Yes.
16	Q	After you received this from
17		Manufactured Housing
18		what did you do in response
19		specifically, to Mr. Parker?
20		tact him in any way?
21	A	I didn't know how to get in
22	contact with	
23	Q	Did you send him a letter to
	~	pro lon peno uru a reccer co

Page 196

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1
     his address that's on the top of this
 2
     letter?
 3
            Α
                  No, I did not.
 4
                  Did you do anything at all to
            0
 5
     contact him? Did you try to find him?
 6
                  No, I did not.
            Α
 7
            Q
                  At that time, you were dealing
 8
     pretty much -- it looks like to me -- with
 9
     Deer Valley, from these reports with the
10
     various things that we've already talked
11
     about; correct?
12
           A
                  Yes.
13
                  But when you got the complaint
14
     or the -- I won't say complaint, but the
15
     document from the Alabama Manufactured
16
     Housing Commission, you continued to
17
     contact Deer Valley.
                             Fair?
18
           Α
                  Most likely.
19
                  And Mr. Parker came to see
20
           Was it shortly after this letter, or
21
     was it --
22
           Α
                  No.
23
                  Okay. Was it after the --
           0
```

Page 232

1	Q There is a claim in that
2	regard, in your lawsuit.
3	A Because of my mental health.
4	Q Do you have any claims for any
- 5	type of mental distress?
6	A I think so.
7	Q What would those be that you
8	think you might have?
9	A What do you mean? About how
10	this affected me?
11	Q Whatever. All I can do is ask
12	you.
13	A I mean, what's your specific
14	question?
15	Q Well, do you allege or do you
16	claim that this has had some adverse
17	effect on you?
18	A Yes.
19	Q How so?
20	A On my mental health.
21	Q How has it had an effect?
22	A It stressed me out. I went
23	through depression, had to see doctors

Page 233

1	about it.
2	
3	Q Okay. When did you see any doctors?
	doctors?
4	A I believe it was in between
5	September and December.
6	Q And what doctors did you see
7	between September
8	A It may have even been before
9	then.
10	Q When would the earliest date
11	have been that you had mental stress,
12	where you needed to see a doctor?
13	A I believe it might have been
14	August.
15	Q And which doctor did you see,
16	or doctors?
17	A Dr. Whatley is my doctor.
18	Q Dr. Whatley?
19	A Yes.
20	Q What's his first name?
21	A I'm not sure.
22	Q And where is his office
23	located?

www.AmericanCourtReporting.com September 18, 2006

,		Page 234						
1	A In Opelika.							
2								
	A I couldn't give you the							
4	specific address.							
5	Q And how long has he been yo	ur						
6	doctor?	2						
7	A For years and years.							
8	Q Is he a general practitione	r,						
9	internal medicine doctor?							
10	A Yes.							
11	Q And what treatment has he							
12	provided for you, as far as stress, on							
13	account of your claims in this lawsuit?							
14	A He's put me on depression							
15	medication and anxiety medications.							
16	Q And what medications are							
17	those?							
18	A I've been through several.	I						
19	believe Zoloft.							
20	Q All right.							
21	A Mirtazapine, Effexor.							
22	Q Any others?							
23	A I can't list them off the to	a c						

www.AmericanCourtReporting.com September 18, 2006

EXHIBIT DD:

SCHEDULING ORDER IN STATE-COURT WHERE PARKER APPEARED

IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

JENNIFER M. GOLDEN,

Plaintiff.

vs.

DEER VALLEY HOMEBUILDERS, INC.; a Corporation TIMBERLINE HOMES, INC., a Corporation; JOHN MARK PARKER, an individual,

Defendant.

CASE NUMBER: CV-06-106

SCHEDULING CONFERENCE ORDER

This is a jury case which was filed on 02/14/06 and came on for a Scheduling Conference on 08/22/06.

Attorney for Plaintiff:

G. Houston Howard, III

Attorney for Defendants:

Warren Butler - Timberline Homes, Inc.

Joel Williams - Deer Valley Homebuilders, Inc.

John Mark Parker - Pro Se (Alex Holtsford has filed an appearance but apparently did not

get notice of the Scheduling Conference)

There are separate issues in this case relating to Arbitration and other issues relating to trial. Two Motions for Arbitration have been filed. The Plaintiff agrees to the Arbitration Motion filed by the Defendant, Timberline Homes, Inc. The Court DENIES the Motion for Arbitration filed by the Defendant, Deer Valley Homebuilders, Inc. Defendant, John Mark Parker, has filed a Motion for Arbitration and Plaintiff disputes his right Arbitration. Defendant, Parker, has thirty (30) days to respond to Plaintiff's objection to Arbitration.

The remaining issues for Trial are subject to the following ORDERS:

AMENDMENTS:

All amendments to pleadings including the adding of parties shall be filed by: 11/01/06

WITNESSES:

Names and address of witnesses and documents shall be exchanged 21 days before trial.

MOTIONS:

All motions including Motions for Summary Judgment shall be filed by: 12/01/06

DISCOVERY:

Discovery shall be completed by: One week before trial U 25. 13

MEDIATION:

3/1/07 Motion for Mediation or Arbitration to be made within 60 days.

PRETRIAL.

CONFERENCE:

Set for March 12, 2007 at 9:00 a.m.

Counsel shall prepare detailed specific factual contentions for submission in writing on

EXHIBIT

Pretrial date.

TRIAL DATE:

Set for April 30, 2007 at 8:30 a.m.

FURTHER

COMMENTS:

Plaintiff shall identify experts with Rule 26(b) information by 12/01/06 and make available for

deposition by 01/15/07

EXHIBIT EE:

PARKER'S 2004 INSTALLATION LICENSE

Alabama Manufactured Housing Commissio

2004 Installer Certification Certificate

Certification Number 1789

EXHIBIT

EE

and application having been duly made and approved by the Authority having jurisdiction, this certificate is hereby issued to: Pursuant to the rules and regulations of the Alabama Manufactured Housing Commission

P. O. Box 3501

LaGrange GA/30241

Certification rules and regulations promulgated thereunder: This Certificate is not transferable and may be revoked for violations of the Installation

County: Troup

Initial School Date: 10/14/1998

Refresher Course Date: 5/15/2003

Expires: December 31, 2004

Fee: \$150.00

Administrator

EXHIBIT FF:

SETTLEMENT STATEMENT DATED APRIL 27, 2005



A. Settlement Statement



U.S. Department of Housing and Urban Development



OMB No. 2502-0265

B. Type of Loan							
1.⊠ FHA 2.□ FmHA 3.□ Conv. Unins.	6. File Nu	ımber	7. Loan Number	8. Mortgage insu	rance Case Number		
4.□ VA 5.□ Conv. Ins.	2005-1	144	2819442	011-5362150-7	703		
C. Note: This form is furnished to give you a sta	tement of	actual settlement cos	ts. Amounts paid to and h	the settlement agent are sh	Nam Itame		
marked "(p.o.c.)" were paid outside the	closing; ti	ney are shown here fo	or information purposes an	d are not included in the total	S.		
D. Name and Address of Borrower	lame and Address of	Seller F. Name and Address of Lender					
Jennifer M. Golden Timberline Homes, inc			AuburnBank				
3031 Lee Road 117	309 Columbus Parkw	•	100 North Gay Street				
Opelíka, Alabama 36804 Opelíka, Alabama 3680)1	Auburn, AL 36830-3110			
					İ		
G. Property Location		•	H. Settlement Agent	<u> </u>			
2999 Lee Road 117		Johnson, Caldwell & Mc	Coy				
Opelika, Alabama 36804							
					Place of Settlement Date		
			117 North Lanier Avenue 04/27/05				
			Lanett, Alabama 36863				
J. SUMMARY OF BORROWER'S TRANS.	ACTION:	-	K. SUMMARY OF S	ELLER'S TRANSACTION:			
100. GROSS AMOUNT DUE FROM BORROW			400. GROSS AMOUNT DUE TO SELLER				
101. Contract sales price		103,000.00	401, Contract sales price		103,000.00		
102. Personal property			402. Personal property				
103. Settlement charges to borrower (line 1400)		1,095.00	403.				
104.			404.				
105. Adjustments for items paid by seller in a		L	405.				
106. City/town taxes	to		406. Cltv/town taxes	ms paid by seller in advance to	e		
107. County taxes	to		407. County taxes	to			
108. Assessments	to		408. Assessments	to			
109.			409.				
110.			410.				
111.			411.				
112.			412.				
120. GROSS AMOUNT DUE FROM BORROWI	=R	104 095 00	420. GROSS AMOUNT D	IJE TO SELLED	102 000 00		
200. AMOUNTS PAID BY OR IN BEHALF OF E		·	500. REDUCTIONS IN A		103,000.00		
201. Deposit or earnest money		10,000.00	501. Excess Deposit (see		10,000.00		
202. Principal amount of new loan(s)		74,095.00	502, Settlement charges t	to seller (line 1400)	9,681.31		
203. Existing loan(s) taken subject to			503, Existing loan(s) take				
204.			504. Payoff of first mortga	ige loan			
205.			EOE Dayoff of casend ma	rtagra lann			
200.			505. Payoff of second mo	rigage loan			
206. Land Equity		20,000.00	506. Land Equity		20,000.00		
207.			507.				
208.			508.				
209.		L	509.				
Adjustments for items unpaid by seller 210. City/town taxes	to			ms unpaid by seller			
210. City/town taxes 211. County taxes	to to		510. City/town taxes 511. County taxes	to			
212. Assessments	to		512. Assessments	to			
213.			513.				
214.			514.				
215.			515.				
216.			516.				
217			517.				
219.			518. 519.				
			J.U.				
220. TOTAL PAID BY / FOR BORROWER		104,095.00	520. TOTAL REDUCTION	AMOUNT DUE SELLER	39,681.31		
300. CASH AT SETTLEMENT FROM OR TO B		R	600. CASH AT SETTLEN	IENT TO OR FROM SELLER			
301. Gross amount due from borrower (line 120)		104,095.00	601, Gross amount due to		103,000.00		
302. Less amounts paid by/for borrower (line 22)	0)	. 104,095.00	602. Less reduction amou	int due to seller (line 520)	39,681.31		
303. CASH FROM BORRO	OWER		603. CASH	SELLER	63,318.69		
Tanderline Homes, Inc.							

Immily M. Balder

Michael R. Morris 115 Sacrefuny - Treasure

Blumberg No. EXHIBIT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT LEMENT STATEMENT File Number: 2005-144 L. SETTLEMENT CHARGES: PAID FROM BORROWER'S FUNDS AT PAID FROM SELLER'S FUNDS AT 700. TOTAL SALES/BROKER'S COMMISSION based on price \$ @ SETTLEMENT SETTLEMENT Division of commission (line 700) as follows: 701. \$ to 702. \$ to 703. Commission paid at Settlement 704 800. ITEMS PAYABLE IN CONNECTION WITH LOAN P.O.C. 801. Loan Origination Fee 730.00 % 802. Loan Discount 803. Appraisal Fee to AuburnBank/Jackie Carter 450.00 804. Credit Report to AuburnBank/MIS 17.00 805. Lender's Inspection Fee to 806. Mtg. Ins. Application Fee to 807. Assumption Fee to 808. Underwriting Fee AuburnBank 450.00 809. Tax Service Fee 810. Flood Cert. Fee AuburnBank/First American Flood 19.00 811. Processing Fee AubumBank 175.00 812. Document Preparation Fee AubumBank 250.00 813. 814 815 900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE 901. Interest from 04/27/05 to 05/01/05 @\$ /day 13.12 4 day(s) 52,48 902. Mortgage Insurance Premium to AuburnBank/FHA 1.095.00 903. Hazard Insurance Premium yrs. to Quality Certified Insurance Services 848.00 904 905 1000. RESERVES DEPOSITED WITH LENDER FOR 1001. Hazard Insurance 2 mo. @\$ 70.67 / mo. 141.34 1 mo. @\$ 1002. Mortgage Insurance 30.26 / mo. 30.26 mo. @\$ 1003. City property taxes / mo. 8 mo. @\$ 1004. County property taxes / mo. 280.24 35.03 1005. Annual Assessments I mo. mo. @\$ 1006. / mo. 1007. mo. @\$ / mo. 1008. Aggregate Credit for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments -210.16 1100. TITLE CHARGES 1101. Settlement or closing fee to Johnson, Caldwell & McCoy 350.00 1102. Abstract or title search to Reli, Inc. 125.00 1103. Title examination to Reli, Inc. 25.00 1104. Title insurance binder 1105. Document preparation to Stewart & Associates, P.C. 150.00 1106. Notary fees to 1107. Attorney's fees to (includes above item No: 1108. Title insurance to Reli, Inc. 434.00 (Includes above item No: 1109. Lender's coverage 74.095.00 --- 75.00 1110. Owner's coverage 103,000.00 -- 359.00 1111. 1112. 1113. 1200. GOVERNMENT RECORDING AND TRANSFER CHARGES 1201. Recording fees Deed \$ 32.00 ; Releases \$ 11.00 ; Mortgage \$ 11.00 54.00 1202. City/county/stamps Deed \$; Mortgage \$ 29.00 111.15 140.15 1203. State tax/stamps Deed \$; Mortgage \$ 1204. 1205. Conveyance fee - Reli, Inc. 35.00 ADDITIONAL SETTLEMENT CHARGES 1300. 1301. Survey 1302. Pest inspection to S & S Termite and Pest 350S 1303. Ovrnght Mail, Copies, Postage 1304. 1305. Courier/Messenger Fee Reli, Inc. 35,00 1306. 1307. Matt Pickering Installation Septic, Field Lines, etc 4,500.00 1308. Installation Servicer to Home Hutchins Electrical Service, Inc. 600.00 have catefully reviewed the HNDN Settlement Statement and to the best of my knowledge and belief, it is a marketicn of all receipts and disbursements made on on my account or by me in the transaction of the page received a copy of the HUD-1 Settlement Statement. 1400. TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections J and K) 9,681.31

fent Statement which I have prepared is a true and and accurate account of this transaction. I have caused or will cause the fundation be fisher that the first of the first o The HUD-1 Settle

Johnson, Caldwell & McC

WARNING: It is a same to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Date

EXHIBIT GG:

STATE SET-UP INSPECTION REPORT

Page 2 of 2 Filed 07/10/2007

Case 3:06-cv-00934-WKW-TFM

Mistake net cert.

350 SOUTH

W-TFM Document 29-34 Filed 07/10/200

ALABAMA MANUFACTURED HOUSING COMMISSION
350 SOUTH DECATUR STREET # MONTGOMERY, ALABAMA 36104
(334)242-4036 # FAX (334)240-3178

	SE'	T-UP INSPECT	ION REPORT	
LOCATOR Y NX				DATE 4/2/05
, INSTALLE	' P			
The Mark Parks	 ,		مرم لا مراج ا	OWNER
DO BOX 3501			<u> </u>	Golden
	1450Z	-	7777	e ka III
CERTIFICATION #_/	7 <i>89</i> DEC	AT # 1/mue	COUNTY / 7	1-H-36804
INSPECTED BY: Man	anu 5#1	AI# None	YEAR: NEW	N VICTOR
11101	ex Oally	195	SIZE OF UNIT	SZ176 USED
HUD LABEL # JRA 540	306 TRA	546307	RESALE DECAL	
SERIAL # C377 AKB				ibelline
INSIGNIA# MA			- 13	ika
	CORRECT	INCORRECT	COM	MENTS:
1. FIRE SEPARATION	<u> </u>	O	Water standing	under home.
2. SITE PREPARATION			All piers are to h	cor Lills red
3. PIERS		_	caps. (M.W. taile	A 3
FOOTINGS	×	Č.		· · · · ·
2000HS SPACING	×	<u> </u>) Several piers 7	1 // A 11
A ALIGNMENT	×	(4)	Anchors are to b	ie installed to
1.1 15			ch death putil the	e auchor hand rests
CAPS/PLATES		<u> </u>	on stabilizer	1 malathad a c
SHIMS		(£	1 - 10 Hidiaged H	es not installed per
MARRIAGE WALL			100 100 10000	us to crown.
g perimeter piers	<u> </u>		BOALENIEW 4 40	vertical the tales
CONSTRUCTION		× 6	and the mount from	dorers justicedou
38"—PIER HEIGHT			The political and the	not to exceed 45°
4. TYPE ANCHOR USED	Home Did	e 04 NA17 (7.	DHap angre	i ic. ve accessive
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SPACING	×			
STABILIZER PLATE	×			
VERTICAL TIES	*			
DIAGONAL TIES	×		•	
LONGITUDINAL TIES		×		
JTT STRAP SECUREMENT	1	<u> </u>		PLAINTIFF'S
STRAP TENSION	X		No. 511	EXHIDII
3° STRAP ANGLE		×	alumberg No. 5113	529
5. TYPE SYSTEM USED	~	4	ā	
INSTALLATION		4-		EXHIBIT
				G.C.
INSTALLER MUST: (1) CERTI AND (2) RETURNING I'T TO TH	FY THAT COR	RECTIONS HAVE RE	EEN MADE RY SIGNAGE	He company
	IS OFFICE BY			IIIO PORIVI
DATE	SIGNA'	TURF		
		The state of the s		

EXHIBIT HH:

PURCHASE AGREEMENT DATED JANUARY 28, 2005

1809 Columbus Parkway Opelika, AL 36801 334-749-6538 fax 334-704-0382 "Purchase Agreement-Form 500"

Jennifer Golden Jennifer Jenn	In this Contrac	of the words I, Me, a	and My refer to on both pages (the Buyer and of this agreem	Co-Buyer Signent, you agree	ning thi to sell	s Contra		e the fo	ollowing desc	cribed t	216	
### 3031 Lee Road 117 Opelika, Alabama 36804 #### Brandon Bracknel ### 1000								Phone 334.	749.6	904			1/28/2005
And Allers Control (Control of Section 2015) 10	Jennifer Go		1447 0	nolika Alah	nama	3680	4		7	alesperson	Brando	on Bra	acknell
2999 Lee								Ωd					
This present to occased 100° 2,500.00 Survey Installed Decerval (1998) 100° 2,500.00 Survey Installed to Optional Equipment 100° 2,500.00 Survey Installed 10	ivery Address	2999 Lee i	Road 117	Ope		. BC	_	L Floor Size				Stock or	
THE DEAL TO SOUTH THE CONTROL OF THE	ke & Model	DeerValley/80	Ó1			Vanc as III		Later	2				
ELDICATION R-VALUE THICKNESS TYPE OF INSULATION BASE PRICE Or OWN STERIOR 30 8.5° Cellulose (Tires/Aruse Credit) 5 XTERIOR 19 6° Fiberplass (Total Land Cost) LOORS 11 3.5° Fiberplass (Total Land Cost) LOORS 11 5.5° Fiberplass (Total Land Cos	rial Number					""Nev	V	Almona	1		_	S.	68,050.
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is insulation information was furnished by the manufacturer and is disclosed in impliance with the Federal Trade Commission Rule 16CRF, Section 480.16 OPTIONAL EQUIPMENT, LABOR AND ACCESSORIES Title Fees Tit		11	3.5"	Fiber	glass					5	\$	67,500	
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Steps Block Skirting 3,200.00 ITADE-IN ALLOWANCE SESS IN DUE ON ABOVE S	Survey						1. 0	ASH FUNCTIAL					
Balance Carried to Optional Equipment Solutions AND EVALUATIONS OF DAMPES ON PAGE 2 OF THIS APPRENENT Description of Trade-In Take This agreement contains the entire understanding between you and me and no other representation or inducement verbal, or written, has been made which is contract. I, or We, acknowledge receipt of this order and that I, or We, have read and understand Page 2 of this agreement. Purport Signed X Description of Trade-In This agreement contains the entire understanding between you and me and no other representation or inducement verbal, or written, has been made which is contract. I, or We, acknowledge receipt of this order and that I, or We, have read and understand Page 2 of this agreement. Approved Approved Timberline Homes, Inc. Retailer SIGNED X But Approved 10,000,000 SUB-TOTAL Solutions And Due additional terms and conditions printed of this contract are agreed to as a part of this agreement, the sa printed above the signatures. I am purchasing the described mar home or vehicle; the optional equipment and accessories, the inside described has been voluntary; that my trade-in is free from all whatsoever, except as noted. Not Valid unless accepted and signed by an Officer of the Company or Authorized Agent. SIGNED X APPROVED Timberline Homes, Inc. Retailer SIGNED X But APPROVED Timberline Homes, Inc. But But APPROVED Timberline Homes, Inc. But SIGNED X But APPROVED Timberline Homes, Inc. But But But APPROVED Timberline Homes, Inc. But But But	Steps	•				20	TRADEL	IN ALLOWANCE		5			
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Balance Carried to Optional Equipment S. UNPAID BALANCE OF CASH SALE PRICE S. OR Balance Carried to Optional Equipment NOTE: WARRANTY AND EXCUISIONS AND LIMITATIONS OF DAMACES ON PAGE 2 OF THIS AGREEMENT OBESCIPTION OF Trade-In Hake Seriosis Seriosis Amy Debt I owe on the Traze To be paid by This agreement contains the entire understanding between you and me and no other representation or inducement verbal, or written, has been made which is contrained in this contract. I, or We, acknowledge receipt of this order and that I, or We, have read and understand Page 2 of this agreement. Not Valid unless accepted and signed by an Officer of the Company or Authorized Agent. SIGNED X Bu APPROVED Timberline Homes, Inc. — Retailer SIGNED X Bu SIGNED X Bu							2. LE	SS TOTAL CRE	DITS	- CUID	TOTAL		00,500
Balance Carried to Optional Equipment NOTE: WARRANTY AND EXCUSIONS AND LIMITATIONS OF DAMAGES ON PAGE 2 OF THIS AGREEMENT ODESCRIPTION of Trade-In Hake Serial # Amount Owing to whom: Any Debt I owe on the Trade-In or inducement contains the entire understanding between you and me and no other representation or inducement verbal, or written, has been made which is contrained in this contract. I, or We, acknowledge receipt of this order and that I, or We, have read and understand Page 2 of this agreement. APPROVED APPROVED Timberline Homes, Inc. — Retailer SIGNED X Bu AU AND PAGE 2 OF THIS AGREEMENT Of this contract are agreed to as a part of this agreement, the sa printed above the signatures. I am purchasing the described mar home or vehicle; the optional equipment and accessories, the ins described has been voluntary; that my trade-in is free from all whatsoever, except as noted. Not Valid unless accepted and signed by an Officer of the Company or Authorized Agent. SIGNED X Bu SOCIAL SECURITY NO 421-25-7874								. 5		506	-101A		
Balance Carried to Optional Equipment NOTE: WARRANTY AND EXCLUSIONS AND UMITATIONS OF DAMAGES ON PAGE 2 OF THIS AGREEMENT Description of Trade-In Make It is I							Cas	n Payment	CACH CA	N E PRICE			68,50
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Description of Trade-In Make Serial # Amount Owing to whom: Any Debt I owe on the Trade-in this agreement contains the entire understanding between you and me and no other representation or inducement verbal, or written, has been made which is contrained in this contract. I, or We, acknowledge receipt of this order and that I, or We, have read and understand Page 2 of this agreement. Not Valid unless accepted and signed by an Officer of the Company or Authorized Agent. Approved Approved Timberline Homes, Inc. — Retailer Signed × Buy							-				v V		**
Description of Trade-In Make Serial # Amount Owing to whom: Any Debt owe on the Trade-In this agreement contains the entire understanding between you and me and no other representation or inducement verbal, or written, has been made which is contrained in this contract. I, or We, acknowledge receipt of this order and that I, or We, have read and understand Page 2 of this agreement. Not Valid unless accepted and signed by an Officer of the Company or Authorized Agent. Approved Approved Timberline Homes, Inc. — Retailer Signed × Buy			<u> </u>				-				* #		
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EXHIBIT II:

GOLDEN'S SECOND INTERROGATORIES TO PROGRESSIVE

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY Plaintiff

VS.

CASE NO. 3:06-CV-00934

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN Defendants

GOLDEN'S SECOND INTERROGATORIES TO PROGRESSIVE

<u>Instructions For Use</u>: In answering the following interrogatories, you are required by law to answer each interrogatory separately and fully under oath. You are required to supply all information available to you, including information held by your attorney. If you discover additional information after filing your answers to these interrogatories, you are required by law to supplement your answers.

Definitions: The "state court action" refers to that action filed by Jennifer Golden in the Circuit Court of Lee County, Alabama, on or about February 14, 2006, being case number CV-2006-106.

8. When did any agent, servant, or employee of Progressive first talk to John Mark Parker?

9. Did any agent, servant, or employee of Progressive ever tell John Mark Parker orally that it was assuming defense of the Golden state court action?



10.	If the answer to	the last	question is	yes, who	told Parker th	is, and when?
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11. Did any agent, servant, or employee of Progressive ever tell JMP Enterprises, Inc. orally that it was assuming defense of the Golden state court action?

12. If the answer to the last question is yes, who told the agent, servant, or employee of JMP Enterprises, Inc. this, and when?

- 13. In response to interrogatory four, you state that "Jerry Knight of Progressive attempted to contact Mr. Parker on April 27, 2006, and again on May 2, 2006." With respect to each such attempted contact, please state,
 - a. Whether it was in person, by telephone, or in writing;
 - b. If the attempted contact was by telephone, please state what number you called,

whether you talked with anyone, and whether you left any voice mail message;

If you left any voice mail message, please state the message that you left.

HOWARD, DUNN, HOWARD & HOWARD

Attorney for Jennifer M. Golden

Of Counsel:

G. Houston Howard II (HOW015)

Howard, Dunn, Howard & Howard

P.O. Box 1148

Wetumpka, Alabama 36092

Telephone: 334-567-4356

Facsimile: 334-567-7080

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on:

R. Larry Bradford Bradford & Sears, P.C. 2020 Canyon Road, Suite 100 Birmingham, AL 35216

John Mark Parker P. O. Box 3501 LaGrange, GA 30242

counsel of record, by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the 27 day of May, 2007.

Doc: Houston \Golden. Jennifer \Progressive \Second. Interrogatories

EXHIBIT JJ:

PROGRESSIVE'S ANSWERS TO SECOND INTERROGATORIES

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY,)
Plaintiff,	
v.) Civil Action Number: 3:06-CV-00934
JMP ENTERPRISES, INC.;)
JOHN MARK PARKER; and)
JENNIFER M. GOLDEN,)
)
Defendants.)

OBJECTIONS AND ANSWERS TO JENNIFER GOLDEN'S SECOND INTERROGATORIES BY PLAINTIFF, PROGRESSIVE PREFERRED INSURANCE COMPANY ("PROGRESSIVE")

Comes now the defendant, Progressive Preferred Insurance Company ("Progressive"), pursuant to Rule 33 of the Federal Rules of Civil Procedure, and objects to Jennifer Golden's second interrogatories as follows:

GENERAL OBJECTIONS

- Progressive objects to any and all interrogatories to the extent that they are vague, overly broad, unduly burdensome, harassing and/or not calculated to lead to the discovery of relevant or admissible evidence.
- Progressive objects to any and all interrogatories to the extent that they seek information protected from discovery by any privilege, including the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or immunity.



- Progressive objects to any and all interrogatories to the extent that they seek 3. confidential, financial, or proprietary business information.
- Progressive objects to any interrogatories which are not reasonably limited in time and/or scope.
- Progressive objects to any and all interrogatories to the extent that they contain 5. certain key terms which are not defined or that are unreasonably compound, disjunctive, or conjunctive.

These "General Objections" are applicable to and incorporated into each of the plaintiff's interrogatories as if specifically stated therein. The stating of specific objections to a particular request shall not be construed as a waiver of the plaintiff's "General Objections." Unless otherwise specifically stated, Progressive's objections to each interrogatory apply to the entire request, including each and every subsection and/or subpart of the request.

SPECIFIC OBJECTIONS AND ANSWERS

- Progressive's representative, Jerry Knight ("Knight"), contacted John Mark 8. Parker on April 21, 2006.
- Knight advised Jill Parker ("Parker") that Progressive would defend the state court action filed by Jennifer Golden ("Golden") under a reservation of rights.
- Knight advised Parker that Progressive's defense of the state court action 10. would be under a reservation of rights on or about June 1, 2006.

- Progressive's attorney objects to this interrogatory on the grounds that it is 11. vague, overly broad, unduly burdensome, and not calculated to lead to the discovery of admissible evidence.
- Progressive's attorney objects to this interrogatory on the grounds that it is 12. vague, overly broad, unduly burdensome, and not calculated to lead to the discovery of admissible evidence.
 - Knight contacted John Mark Parker by telephone. 13. (a)
 - Telephone number: (706) 881-5301. (b)
- Knight left a message on voice mail on John Mark Parker's voice mail (c) for him to return Knight's telephone call.

Progressive Preferred Insurance Company

Sworn to and subscribed before me this the 26 day of June, 2007.

MY COMMISSION EXPIRES: July 12, 2009 BONDED THRU NOTARY PUBLIC UNDERWRITERS

Bradford, Attorney for Plaintiff, Progressive Preferred Insurance Company

Attorney Bar Code: BRA039

Shane T. Sears, Attorney for Plaintiff, Progressive Specialty Insurance Company Attorney Bar Code: SEA026

OF COUNSEL:

Bradford & Sears, P.C. 2020 Canyon Road Suite 100 Birmingham, AL 35216

CERTIFICATE OF SERVICE

I hereby certify that I have this the 5 day of July, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

G. Houston Howard, Esq. Howard, Dunn, Howard & Howard P.O. Box 1148 Wetumpka, Alabama 36092

Mr. John Mark Parker JMP Enterprises P.O. Box 3501 LaGrange, Georgia 30242

OF COUNSEL

EXHIBIT KK:

AFFIDAVIT OF GORDON L. DAVIS

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

PROGRESSIVE PREFERRED INSURANCE COMPANY Plaintiff

VS.

CASE NO. 3:06-CV-00934-WKW

JMP ENTERPRISES, INC.; JOHN MARK PARKER; and JENNIFER M. GOLDEN Defendants

AFFIDAVIT OF GORDON L. DAVIS, PE

Before the undersigned Notary Public for the State of Alabama at Large personally appeared Gordon L. Davis, who says on oath as follows:

- 1. My name is Gordon L. Davis, and I am a licensed Professional Engineer in the State of Alabama. My Alabama license number is 10479. I have been licensed as a Professional Engineer continuously in the State of Alabama since 1974, and I have been actively engaged in the practice of structural engineering in Alabama since 1970. Exhibit 1 attached hereto is a true and correct copy of my resume of training and experience. As is shown by the resume, I am also licensed as a Professional Engineer in numerous other states.
- 2. I inspected the residence of Jennifer Golden at 2999 Lee Road 117, Opelika, Alabama on April 12, 2007.
- 3. The home is located on a site that is significantly lower than the elevation of Lee Road 117, which is the access for the property.
- 4. During my inspection I went in the home, under the home, and I took photographs of some conditions I observed.



5. I personally observed an accumulation of soil on the bottom flanges of the girders and imbedded adjacent to the web of the girders. Exhibit 2 attached hereto is a true and accurate depiction of some of the conditions that I observed.

Document 29-38

- 6. I also observed a curvature in the girders that was perpendicular to the frame.
- 7. These conditions that I observed indicate that the girders were imbedded in the ground during the transportation process.
 - 8. I observed minor twisting and racking of door frames at the interior of the structure.
- 9. Some curvature of interior walls also exists. Inside the home I observed a bowed interior wall that was directly above the area where I observed the curvature or bend in the frame. Exhibits 3 and 4 truly and accurately depict the curvature in the wall.
- 10. The change in elevation from the county road to the home site is such an abrupt drop that, considering the length of the home, the girders under the home would have been binding and dragging across the ground surface as the home was brought from the county road on to the lot.
- 11. In my opinion, turning the structure as the binding conditions existed and as the home was moved from County Road 117 to the site resulted in twisting of the steel girders.
- 12. Based on my training and experience, and my examination of the home, it is my opinion that the damage described above is result of improper handling of the structure during the transportation process to the site. This resulted in lateral movements of the structure and caused permanent deformations in the structure.

13. It is also my opinion that the bowing	of the inter	ior wall at the ma	arriage line is a direct
result of the twisting of the frame in transportation	n.		
Len J. Len			
GORDON L. DAVIS			
Subscribed and sworn to before me this	3nd	_day of July_	, 2007.

My Commission Expires: /2 - 2 - 07

Gordon L. Davis, P.E. Consulting Structural Engineer P. O. Box 241371

Montgomery, Alabama 36124-1371

Phone: (334) 252-9000 Fax: (334) 252-9003

E-Mail: gldavis1@mindspring.com

Profile

- Over 37 years experience as a structural engineer
- Commercial and residential structural design
- Structural design for renovation and restoration projects
- Structural inspections on commercial and residential property
- Structural evaluation and repair designs for foundations and framing systems of commercial and residential property
- Expert witness testimony

Structural Design of Commercial Facilities

Warehouses

Industrial Buildings

Schools

Hospitals

Churches

Prisons & Jails

Offices

Shopping Centers & Malls

Military Facilities

Bridges

Aircraft Hangars

Agricultural Facilities

Athletic Complexes

Structural Design of Residential Buildings

Single family housing

Apartments 2

Multi-level condominiums

Education

Bachelor of Science, Civil Engineering Auburn University, 1970

EXHIBIT

Employment

1981 - Present Owner/Structural Engineer, Davis Structural Engineers Montgomery, Alabama

This employment includes responsible charge of structural design of commercial buildings including warehouses, industrial buildings, schools, hospitals, churches, prisons and jails, offices, shopping centers and malls, military facilities, aircraft hangars, agricultural facilities, athletic complexes, and bridges. The structural design of residential buildings includes single family housing, apartments and multi-level Structural systems include designs using structural steel, reinforced concrete, condominiums. prestressed concrete, masonry and timber. Design techniques include simple framing, continuous spans, rigid frames, semi-rigid frames and braced frames. Foundation designs include spread footings and pile foundations. As owner, the responsibilities include office management. As a structural engineer, structural inspections, evaluations and repair recommendations for framing systems and foundation systems of existing commercial and residential structures including providing construction inspections for repairs is part of the responsibilities. Expert witness testimony for structural related complaints is also provided.

1980 - 1981 Vice President - Jones, Davis and Associates, Inc. Montgomery, Alabama

I was in responsible charge of structural design of commercial buildings, warehouses, schools, hospitals, etc. Structural systems included designs of structural steel, reinforced concrete, prestressed concrete, masonry and timber. Design techniques included simple framing, continuous spans, rigid frames, semirigid frames and braced frames. Foundation designs included spread footings and pile foundations. I performed structural inspections, evaluation and repair recommendations for framing systems and foundation systems of existing commercial and residential structures and provided construction inspections for repairs. I also provided expert witness testimony for structural related complaints.

1973 - 1980Structural Engineer, Ralph E. Jones and Associates

I was in responsible charge of structural design of commercial buildings, warehouses, schools, hospitals, etc. Structural systems included designs of structural steel, reinforced concrete, prestressed concrete, masonry and timber. Design techniques included simple framing, continuous spans, rigid frames, semirigid frames and braced frames. Foundation designs included spread footings and pile foundations. I performed structural inspections, evaluations and repair recommendations for framing systems and foundation systems of existing commercial and residential structures and provided construction inspections for repairs. I also provided expert witness testimony for structural related complaints.

1970 - 1973Graduate Civil Engineer, Alabama Highway Department Montgomery, Alabama

Engineer in Training. I worked under the supervision of Professional Engineers in the layout and design of highway bridges. Designs included substructure and superstructures for all types of bridges using structural steel, reinforced concrete, and prestressed concrete.

Technical and Professional Societies

American Concrete Institute American Society of Civil Engineers American Institute of Steel Construction International Code Council Prestressed Concrete Institute National Concrete Masonry Association Structural Engineers Association of Alabama Auburn Alumni Engineering Council

Registration (Professional Engineer):

Alabama - Professional Engineer #10479 Arkansas - Professional Engineer #5753 Florida - Professional Engineer #21879 Georgia - Professional Engineer #10337 Kentucky - Professional Engineer #10,788 Louisiana - Professional Engineer #16095 Mississippi - Professional Engineer #8259 North Carolina - Professional Engineer #11335 Oklahoma - Professional Engineer #14797 Pennsylvania - Professional Engineer #PE-054046-E South Carolina - Professional Engineer #12946 Tennessee - Professional Engineer #15,306 Texas - Professional Engineer #49186 Virginia - Professional Engineer #031276 West Virginia - Professional Engineer #10082



DEPOSITION AND TRIAL APPEARANCES Gordon L. Davis, P.E.

February 2002 - May 2007

Job#:

2000-433

Trial -

2/26/02; 2/27/02

Client:

Nat Hess

Property:

208 Wind Mist

Case:

Hess vs. Alexander

Alexander City, Alabama

Location:

Elmore County Circuit Court

Case#:

Job #:

99236

Deposition -

4/9/02

Client:

Steve Langham

Property:

Case:

McDonald Construction, Inc. vs.

Associated Scott Lands, Inc.

Location:

County Courthouse

Union Springs, Alabama

Case #:

Job #:

2000-062

Deposition -

5/1/02

Client:

David Bedgood -

Property: 408 Forest Hills Place

Alabaster, Alabama

Case:

Crumpton & Associates Ralph & Linda Bingham vs.

J. Elliott Corporation

Location: Case #:

Shelby County Circuit Court

CV-00-907

Job#:

99236

Trial -

5/30/02

Client:

Property:

Case:

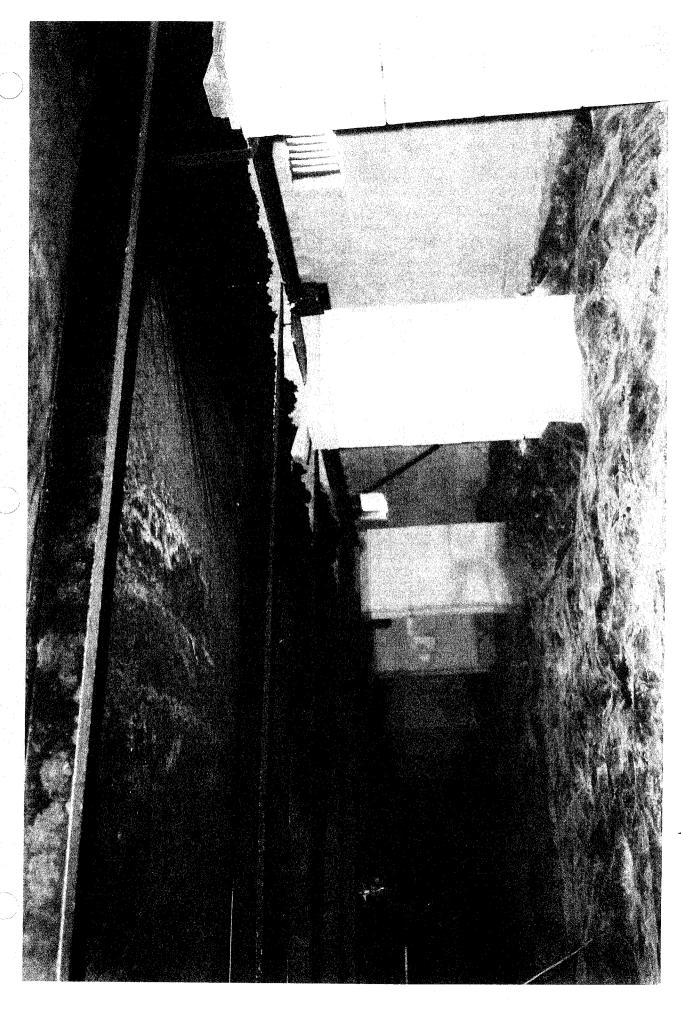
McDonald Construction, Inc. vs. Associated Scott Lands, Inc.

Location:

County Courthouse

Union Springs, Alabama

Case#:



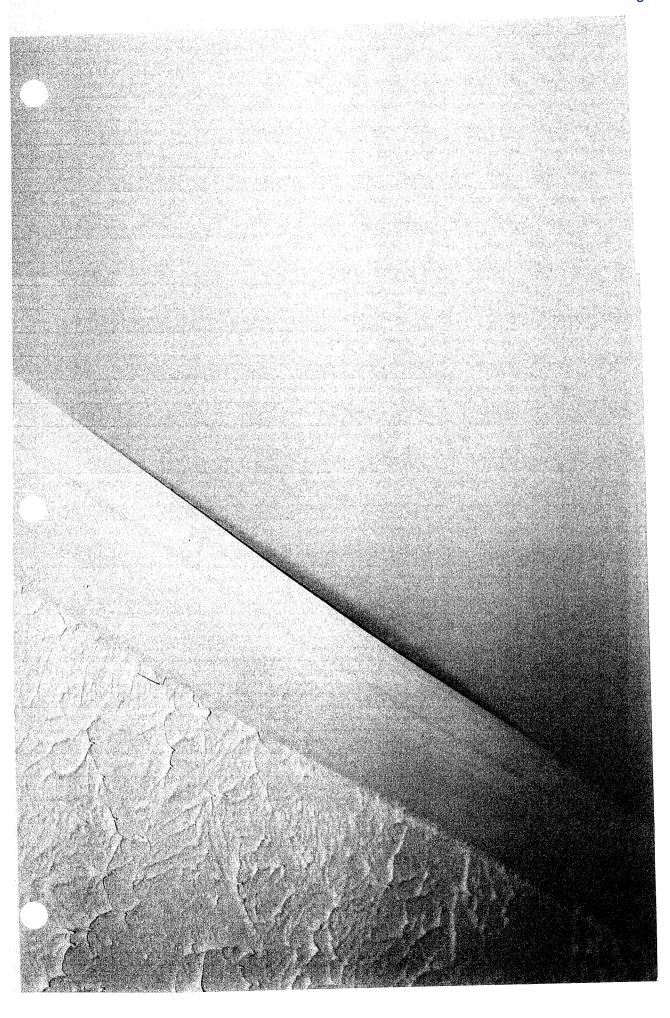








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EXHIBIT LL:

LL. B. ALLEN, Alabama Liability Insurance Handbook (1996)

ALABAMA LIABILITY INSURANCE **HANDBOOK**

Bibb Allen of the Alabama Bar

MICHIE Law Publishers CHARLOTTESVILLE, VIRGINIA



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Library of Congress Catalog Card No. 96-75624 ISBN 1-55834-319-9

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§ 4-2(b) ALABAMA LIABILITY INSURANCE HANDBOOK

settlement, whether the settlement offers or rejections come from the injured party or the insurance company.³

§ 4-2(b). Reservation of Rights Letter to Be Sent to All Insureds.

It is axiomatic that a letter denying coverage, or reserving rights to contest coverage at a later date, must go not only to the named insured but to all possible insureds. Although apparently there is no Alabama law on the subject, the case of *Knox-Tenn Rental Co. v. Home Insurance Co.*⁴ is sound law. In that case, Home Insurance issued a policy to Jenkins Insurance, Inc. Lowe was treasurer of the company and entitled to coverage as an officer of the corporation. Home sent a letter to Jenkins reserving its rights to defend and deny coverage at a later date. Lowe was not included in the letter nor did anyone speak to him about the letter. The insurer was held obligated to pay a \$1,058,351.86 judgment because it failed to reserve its rights as to Lowe. The court, in the course of its opinion, said:

The reservation of rights letter Home sent to Jenkins Insurance simply did not provide the level or clarity necessary to provide notice to Lowe. It is not reasonable to assume that a letter addressed to a company as a whole will come to the attention of a particular officer or employee. That is particularly true here, since Lowe's role with Jenkins was as accountant for the business, a role he also performed for at least one other company owned by Ronald Jenkins. He was not involved in all aspects of the business of Jenkins Insurance. Moreover, even if Lowe read the letter or its contents somehow came to his attention through co-workers, he reasonably could have concluded that Home's reservation of rights applied to the company and not to him in light of the fact that the

 $^{^3}$ L & S Roofing, 521 So. 2d at 1303.

^{4 2} F.3d 678 (6th Cir. 1993) (applying Tenn. law).

Page 5 of 9

letter was addressed to Jenkins Insurance, although he and several others had been named as individual defendants in the same suit.5

§ 4-2(c). Effect of Defending Without Notice of Reservation of Rights.

The general rule, and the law in Alabama, is that if an insurer takes over the defense of an action, without giving notice that it reserves the right to contest coverage, it is thereafter precluded from setting up defenses of non-coverage.6

§ 4-2(d). Knowledge of Forfeiture.

A reservation of rights letter should go to an insured as soon as the insurer has knowledge of acts that would affect coverage. In Blackwood v. Maryland Casualty Co.,7 the court said:

It may be stated as a general rule that the acts or statements of an insurer admitting liability on a policy will not amount to a waiver of matters vitiating the policy, unless the insurer has knowledge of such matters at the time, and this is especially true if the insured

⁵ Id. at 683.

⁶ Shelby Steel Fabricators, Inc. v. USF&G, 569 So. 2d 309 (Ala. 1990); Campbell Piping Contractors, Inc. v. Hess Pipeline, 342 So. 2d 766 (Ala. 1977) ("The general rule is limited by the principle that the insurer may avoid the operation of the rule by giving notice that the assumption of the defense is not a waiver of its rights to deny coverage."); Burnham Shoes, Inc. v. West Am. Ins. Co., 504 So. 2d 238 (Ala. 1987) (Complaint alleged intentional wrongs and insurer took over the defense, without reserving its rights to deny coverage. The court held that the defense of lack of coverage had been waived. "Thus, under Alabama law, if an insurer does, in fact, undertake to defend an insured without reserving the right to withdraw its defense, it thereby waives its right to do so.").

⁷ 24 Ala. App. 527, 137 So. 467 (1931) (insurer waived breach of the cooperation clause by continuing to defend after notice of a breach).

§ 4-2(e) ALABAMA LIABILITY INSURANCE HANDBOOK

has taken no action before a denial of liability by the insurer, or has not been misled to his prejudice by such admission or act.8

§ 4-2(e). Notice Must Be Timely.

For notice to the insured that the undertaking of a defense is not a waiver of any coverage defenses it might have, the notice must be timely. Quoting from Campbell Piping Construction, Inc. v. Hess Pipeline Co., 9 the court, in Burnham Shoes, Inc. v. West American Insurance Co., 10 said: "A like number of jurisdictions also held that the insurer need only give timely notice that its undertaking to defend does not constitute a waiver of any coverage question it might have." 11

A sample of cases from other jurisdictions may be helpful.¹² All cases hold that notice must be given to an insured within a reasonable time after knowledge of a forfeiture is received.

⁸ Id. at 530.

^{9 342} So. 2d 766 (Ala. 1977).

^{10 504} So. 2d 238 (Ala. 1987).

¹¹ Id. at 242; see also Alabama Farm Bur. Mut. Cas. Ins. Co. v. Adams, 289 Ala. 304, 267 So. 2d 151 (1972) (insured not prejudiced by six-month delay in giving notice from time of accident); Shelby Steel Fabricators, Inc. v. USF&G, 569 So. 2d 309 (Ala. 1990) (29 months from time of accident too long).

¹² See, e.g., Cozzens v. Bazzani Bldg. Co., 456 F. Supp. 192 (Mich. 1978) (22 months between the time the complaint was received and reservation notice was too long); Fire Ins. Exch. v. Fox, 423 N.W.2d 325 (Mich. 1988) (four-month delay was not unreasonable); Saleno v. Western Cas. & Sur. Co., (CA 8 Mo. 1964) (ten-month delay was held too long); Whitney v. Continental Ins. Co., 595 F. Supp. 939 (Mass. 1984) (21 months held, as a matter of law, too long); Commercial Union Ins. Cas. v. Jedamich Enters., 536 N.Y.S. 523 (1989) (five-month delay a question for the jury).

RESERVATION OF RIGHTS; WAIVER & ESTOPPEL

§ 4-2(h)

\S 4-2(f). Prompt Investigation Is Essential.

Investigation of the event should be made promptly and failure to investigate promptly may result in a constructive denial of coverage.13

§ 4-2(g). Letter to Be Amended upon Knowledge of Additional Forfeiture.

Where an insurer reserves its rights on specific grounds and other grounds of forfeiture are brought to the insurer's attention through discovery or otherwise, the reservation of rights letter should be promptly amended to include the newly discovered grounds.14

§ 4-2(h). All Grounds of Forfeiture to Be Included.

A reservation of rights letter must be clear and specific. An insurer that specifically disclaims coverage on one ground of forfeiture waives all other grounds which might have been stated but were not.15

¹³ Livingston v. Auto Owners Ins. Co., 582 So. 2d 1038 (Ala. 1991) (delay of three months held to be a jury issue as to whether there was a constructive denial on a fire policy),

¹⁴ American Ins. Co. v. Millican, 26 Ala. App. 31, 153 So. 448 (1933) ("... if its investigation develops a fact on which a forfeiture may justly be claimed and it desires and intends to rely thereon, it cannot without waiving such defense proceed thereafter as though the policy was valid. And a nonwaiver agreement does not prevent a waiver by subsequent independent acts or statement of insurer through its adjuster or other agent having authority to act in the premises. In other words, a nonwaiver agreement may be waived in like manner as any other clause in the contract of insurance. 26 Corpus Juris, 405 (519) (3), note 58."); Blackwood v. Maryland Cas. Co., 24 Ala. App. 527, 137 So. 467 (1931) ("If, however, Bostick breached that part of the insurance contract requiring him, at the request of defendant, to co-operate in the defense of plaintiff's claim and with a knowledge of this breach defendant continued to represent Bostick in defense of the suit, such was a waiver of the breach, and defendant cannot now plead such breach in bar of this action."); USF&G v. Remond, 221 Ala. 349, 129 So. 15 (1930).

¹⁵ Home Indem. Co. v. Reed Equip. Co., 381 So. 2d 45 (Ala. 1980); Auto

§ 4-2(h)

ALABAMA LIABILITY INSURANCE HANDBOOK

In Auto Owners Insurance Co. v. English, the court wrote:

American, with knowledge of all pertinent facts, denied liability solely on the ground that it was not the primary insurer in the present situation. When an insurer specifically denies liability on one ground, it thereby waives all other grounds of forfeiture. Rhode Island Ins. Co. of Providence, R.I. v. Holley, 226 Ala. 320, 146 So. 817; Travelers Ins. Co. v. Plaster, 210 Ala. 607, 98 So. 909; Fidelity-Phoenix Fire Ins. Co. v. Ray, 196 Ala. 425, 72 So. 98; National Life & Accident Ins. Co. v. Singleton, 193 Ala. 84, 69 So. 80; Security Ins. Co. v. Laird, 182 Ala. 121, 62 So. 182; Georgia Home Ins. Co. v. Allen, 128 Ala. 451, 30 So. 537; 16 Appleman, Insurance Law and Practice, § 9260, p. 837; 45 C.J.S., Insurance, § 1005, p. 1230. Thus, when American specifically denied liability on the ground that it was not the primary insurer, it waived forfeiture for lack of sufficient notice and cooperation on the part of insured. Liverpool & London & Globe Ins. Co., Ltd., of England v. McCree, 213 Ala. 534, 105 So. 901; Travelers Ins. Co. v. Plaster, supra; 8 Appleman, Insurance Law and Practice, § 4747, p. 146; Indemnity Ins. Co. of North America v. Forrest, 9 Cir., 44 F.2d 465; Hunter v. Hollingsworth, 165 Va. 583, 183 S.E. 508; 8 Appleman, Insurance Law and Practice, § 4786, p. 185. Moreover, the question of cooperation of English with American is one of fact, and although the trial court made no specific finding as to this fact, the effect of the decree is that it has been determined by the trial court adversely to appellant on testimony taken orally before it.16

Owners Ins. Co. v. English, 266 Ala. 80, 94 So. 2d 397 (1957); St. Paul Fire & Marine Ins. Co. v. Smith, 280 Ala. 425, 194 So. 2d 830 (1967); Williams v. Alabama Farm Bur. Mut. Cas. Ins. Co., 416 So. 2d 744 (Ala. 1982) (by relying on the ground of non-cooperation, Alabama Farm Bureau "waived all other grounds of forfeiture"); Auto Owners Ins. Co. v. Rodgers, 360 So. 2d 716 (Ala. 1978).

¹⁶ English, 266 Ala. at 86.

In Shelby Steel Fabricators, Inc. v. USF&G, ¹⁷ the reservation of rights letter sent to Shelby's attorney stated the following: "Since this was our first notice of the claim and the matter will require extensive investigation, it will be necessary for us to handle the matter under a non-waiver agreement pending the completion of the investigation." The non-waiver was very general and unsigned. The court said: "We are of the opinion that the correspondence that was sent to Shelby's attorney constituted at least constructive notice to Shelby Steel as to the reservation of rights." It is here strongly suggested by the author that the above letter is sufficient only under the exact facts involved in Shelby Steel.

Some insurers, apparently fearful that they will leave out something or be charged with the failure to detail the grounds for possible forfeiture, go to such extremes that an insured is bewildered by the detail. These letters often set out policy provisions that are not involved and serve to confuse rather than explain. Such letters should be discouraged. It is not necessary to detail each policy provision.

§ 4-3. Enhanced Obligation of Good Faith.

When an insurer elects to defend under a reservation of rights, it takes on an additional duty, known as "enhanced obligation of good faith." The Alabama Supreme Court has laid down rigid rules of law directed to insurers and their attorneys as to their specific duties where a case is being defended by the insurer under a reservation of it rights to later deny coverage. The "enhanced obligation of good faith" is met as long as the insurance company complies with certain criteria. Where the criteria are met, the insurer need not pay for an insured's independent attorney but may use a competent attorney of its

^{17 569} So. 2d 309 (Ala. 1990).

¹⁸ Id.; see also L & S Roofing Supply Co. v. St. Paul Fire & Marine Ins. Co., 521 So. 2d 1298 (Ala. 1987).

EXHIBIT MM:

DECISION IN STAR INSURANCE CO. V. WARD, (Case No. 2:05-CV-197-WKW, United States District Court for the Middle District of Alabama)

Case 2:05-cv-00197-WKW-CSC

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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

STAR INSURANCE COMPANY,)	
Plaintiff,)	
v.)	CASE NO. 2:05-CV-197-WKW
A-1 METALS, INC., et al.,)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

This cause is before the court on three motions for summary judgment (Docs. # 47, 49 and 52), filed on October 7, 2005, October 12, 2005, and October 14, 2005. For reasons to be discussed, the Court finds that the motions filed by defendants Conrad and June Ward and Steve Cochran are due to be GRANTED, and the motion filed by plaintiff Star Insurance Company is due to be DENIED.

I. FACTS AND PROCEDURAL HISTORY

The facts contained in the parties' evidentiary submissions, viewed in a light most favorable to the non-movant, show the following:

Conrad and June Ward ("Ward")¹ contracted with A-1 Metals in January 2003 for construction of a metal roof on their house and barn. Steve Cochran ("Cochran"), a sales representative for A-1 Metals, facilitated the contract. According to Ward, at the time she entered into an agreement with A-1 Metals, Cochran represented that all A-1 Metals employees who installed the roofing system would be factory trained. From March to June of 2003, Ward

¹ Conrad Ward is now deceased, and June Ward, as executrix of his estate, has been substituted as a party for Conrad Ward. For the sake of simplicity, the Court will refer to June Ward as a singular defendant.

experienced numerous problems with the roofing system. On August 4, 2003, Ward filed suit against A-1 Metals, Cochran and others in state court, alleging, among other things, that Cochran's representations were fraudulent and that the installation of the roofing system was performed in a negligent and wanton manner.

A-1 Metals was insured through a general commercial liability policy issued by Star Insurance ("Star") which was in effect from February 12, 2003 until February 12, 2004. A-1 Metals did not attempt to notify Star when it was served with Ward's state court complaint in August 2003. Attorney Jerry Quick, without the knowledge of Cochran, entered an appearance in the state court action on behalf of both A-1 Metals and Cochran. Cochran, however, was not properly served until October or November of 2004, and had not met attorney Quick before then. In November 2004, after Cochran informed Quick that a liability insurance policy existed, Star was notified of the pending lawsuit. The trial was scheduled to begin in January 2005. Discovery was still ongoing at the time Star learned of the lawsuit. Depositions of two of the defendants were conducted in December 2004. Star did not inform the defendants as to whether it would provide a defense, nor did Star issue a reservation of rights letter. The case was tried in Elmore County in January 2005, and a jury returned a verdict in favor of Ward and against A-1 Metals and Cochran in the amount of \$350,000.²

Star Insurance Company filed a Complaint (Doc. # 1) with this Court on March 1, 2005, seeking a declaratory judgment regarding its obligations in the underlying state court case. Ward filed an Answer and Counterclaim (Doc. # 5) on March 28, 2005. Now pending before the Court are three motions for summary judgment (Docs. # 47, 49 and 52), filed by, respectively, Ward, Cochran and Star. On March 23, 2006, this Court entered an order (Doc. # 86) limiting Star's

² The verdict has been upheld on appeal. See Cochran v. Ward, 2006 WL 204989 (Ala. 2006).

defenses in response to Ward's counterclaim.

II. JURISDICTION AND VENUE

Star is a citizen of Michigan; A-1 Metals, Cochran and Ward are citizens of Alabama. The amount in controversy exceeds \$75,000. Therefore, this Court exercises subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. Additionally, the Court finds that the record includes adequate allegations supporting personal jurisdiction and venue.

III. SUMMARY JUDGMENT STANDARD

Under Rule 56 (c) of the Federal Rules of Civil Procedure, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party asking for summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Id.* at 323. The movant can meet this burden by presenting evidence showing there is no dispute of material fact, or by showing the non-moving party has failed to present evidence in support of some element of its case on which it bears the ultimate burden of proof. *Id.* at 322-23.

Once the moving party has met its burden, Rule 56(e) "requires the nonmoving party to go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial."

Id. at 324. To avoid summary judgment, the nonmoving party "must do more than simply show that

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there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). On the other hand, the court must believe the evidence of the non-movant and must draw all justifiable inferences from the evidence in the non-moving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). After the nonmoving party has responded to the motion for summary judgment, the court must grant summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c).

IV. DISCUSSION

A. Notice to Star

Star contends that, because it did not receive notice of the Wards' suit against Cochran and A-1 Metals until November 2004, it was not obligated to pay for the resulting state-court judgment. Star points to a provision in the insurance policy excluding any claims for which the insureds did not provide timely notice to the insurance company. The exclusion reads:

- 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit
- You must see to it that we are notified as soon as practicable a. of an "occurrence" or an offense which may result in a claim.
- If a claim is made or "suit" is brought against any insured, b. you must . . . see to it that we receive written notice of the claim or "suit" as soon as practicable.
- You and any other involved insured must: c.
 - Immediately send us copies of any demands, notices, **(1)** summonses or legal papers received in connection with the claim or "suit";

(Doc. # 51, Ex. 3 at 22, 36.) The policy explains that "you" refers to a named insured, and "insured" refers to any person covered under the policy. (*Id.* at 14.) In this case, "you" referred to A-1 Metals, and "insured" referred to both A-1 Metals and Cochran. A-1 Metals, therefore, was required to provide Star with notice of any occurrence which may have resulted in a claim; Cochran, however, was only required to provide Star with a copy of the complaint and summons after he became aware that a suit had been initiated.

It is undisputed that, upon learning of the state court suit, Cochran provided notice to Star. Although two summonses were sent to Cochran after the state court action was filed, there is no evidence that Cochran was served with either summons. (Doc. # 47, Ex. A ¶ 4.) Cochran testified that he was never served with a complaint and that he had "no actual knowledge" of the lawsuit until October or November of 2004. (Doc. # 47, Ex. S.) Although attorney Jerry Quick filed an appearance on behalf of all state court defendants, including Cochran, Cochran testified that he did not know who Quick was until October or November of 2004. (*Id.*) The first time Quick and Cochran met, Cochran told Quick "that there was insurance for the case." (*Id.*) Star admits that it was notified of the pending lawsuit on either November 5 or November 8, 2004. (Doc. # 47, Ex. E ¶ 5.) Further, Quick made several attempts to contact Meadowbrook Insurance Group ("Meadowbrook"), to discuss the state court case during November and December 2004.³ (Doc. # 47, Ex. C.) Quick indicated to Meadowbrook's representative that A-1 Metals did not have the resources to thoroughly defend the case. (*Id.*) Even after receiving notice of the lawsuit, Star did not notify A-1 Metals or Cochran as to whether it would provide a defense, nor did Star issue a

³ The record does not describe Meadowbrook's connection to Star, but Star makes no issue of the efficacy of notice to Star through contacts with Meadowbrook.

reservation of rights letter to A-1 or Cochran. (Doc. # 47, Ex. E. ¶¶ 8, 10.) Discovery in the state court case was still ongoing at the time Cochran provided notice to Star; the depositions of Herman Cline, owner of A-1 Metals, and Cochran were not taken until December 17, 2004. (Doc. # 59, Exs. X and Y.)

Star argues that it did not receive notice of the state court suit until two months before the trial was scheduled to begin, and therefore was unable to mount a proper defense. However, the Alabama Supreme Court has held that "whether the insurer was prejudiced by the delay is immaterial to a determination of the reasonableness of the delay" Southern Guaranty Ins. Co. v. Thomas, 334 So. 2d 879, 883 (Ala. 1976). Upon learning that he had been named as a defendant in the Wards' suit, Cochran gave notice to Star of the claims against him. When he first learned of the suit in either October or November of 2004, Star was notified promptly. Moreover, had Star intervened at that time, it could have participated in defending the suit. Discovery was still ongoing, and Star had adequate time to ask for a continuance of the trial date. Even after Star was provided with notice of the suit, it declined to participate or reserve its rights. The Court finds that Cochran provided Star with proper notice, as required by the terms of the insurance policy, and that Star may not now rely on lack of notice as a defense to payment of the underlying judgment.

Star argues that Cochran knew of a *potential* claim well in advance of November 2004 because he knew that the Wards were dissatisfied with the work performed on their roof. According to the plain language of the insurance policy, however, Cochran—as an insured but not a named insured—was only obligated to provide notice to Star upon receiving written notice of a suit or claim against him. It is undisputed that Cochran did not know that he had been named as a defendant in the Wards' suit until October or November of 2004. Even if Cochran had heard that the Wards were

dissatisfied, this knowledge alone was not enough to cause Cochran to believe he was liable for potential claims.

When the facts regarding notice are not disputed, adequacy of notice of pending litigation is a question of law. *Southern Guaranty*, 334 So. 2d at 882-83. Under the facts presented, the Court finds that Cochran's notice to Star was adequate under the terms of the policy, and that Cochran is therefore entitled to indemnity in the state court action.

B. Property Damage Exclusion

Star claims that the Wards' state court claims against A-1 Metals and Cochran are not covered by the insurance policy. Star points to an exclusion in the policy which states that Star "will not pay for loss or damage caused by . . . [f]aulty, inadequate or defective . . . workmanship, repair, [or] construction." (Doc. # 52-1 at 9-10.) In its brief, Star neglects to cite to a specific provision of the policy where this exclusion can be found. Upon examining the insurance policy in its entirety, the Court finds this exclusion is stated only in the Commercial Property section of the policy. No such exclusion is found in the policy's general liability coverage.

The Alabama Supreme Court has repeatedly held that damage caused by roofing work is covered under general liability insurance policies which use language similar to that found in the policy in this case. See Employers Ins. Co. of Ala., Inc. v. Ala. Roofing & Siding Co., Inc., 124 So. 2d 261 (Ala. 1960); United States Fidelity & Guaranty Co. v. Bonitz Insulation Co. of Ala., 424 So. 2d 569 (Ala. 1982); L.J. Moss v. Champion Ins. Co., 442 So. 2d 26 (Ala. 1983). The Court finds no policy language that excludes Ward's state court claims under the general liability insurance policy.

V. CONCLUSION

For the reasons set forth above, it is hereby ORDERED that:

- 1. Ward's Motion for Summary Judgment (Doc. # 47) is GRANTED.
- 2. Cochran's Motion for Summary Judgment (Doc. # 49) is GRANTED.
- 3. Star's Motion for Summary Judgment (Doc. # 52) is DENIED.

A final judgment will be entered in accordance with this order.

DONE this the 12th day of July, 2006.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

EXHIBIT NN:

REQUEST FOR ADMISSIONS ESTABLISHING DATE PARKER PAID FOR 2005 LICENSE

IN THE CIRCUIT COURT OF LEE COUNTY

JENNIFER M. GOLDEN, PLAINTIFF,

v.

CASE NO. CV-2006-106

DEER VALLEY HOMEBUILDERS, INC., a CORPORATION; TIMBERLINE HOMES, INC., a corporation; JMP ENTERPRISE SERVICES, INC., a corporation, and JOHN MARK PARKER, an individual.

DEFENDANTS

PLAINTIFF'S SECOND REQUESTS FOR ADMISSIONS TO
JOHN MARK PARKER

Comes now the plaintiff and requests the defendant John Mark Parker to admit the truth of the following facts:

16. John Mark Parker did not submit any check or payment to the Alabama Manufactured Housing Commission for his 2005 license to install manufactured homes prior to May 19, 2005.

HOWARD, DUNN, HOWARD & HOWARD,

Attorneys for Plaintiff

12V1

G. Houston Howard II (HOW15)

OF COUNSEL:
G. HOUSTON HOWARD II
HOWARD, DUNN, HOWARD & HOWARD
P. O. BOX 1148
WETUMPKA, AL 36092
(334) 567-4356

Blumberg No. 5119

EXHIBIT

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document Joel A. Williams at 2500 Wachovia Tower, 420 North 20th Street, Birmingham, Alabama 35203-5203; M. Warren Butler at P.O. Box 2727, Mobile, Alabama 36652-2727, and Jeffrey G. Hunter, P.O. Box 4128, Montgomery, AL 36103 and R. Larry Bradford at 2020 Canyon Road, Suite 100, Birmingham, Alabama 35216, by depositing a copy thereof in a United States mail receptacle, addressed to the last known address of such counsel, first class mail, postage prepaid, this the 11th day of December, 2006.

OF COUNSEL (HOW015)

IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

JENNIFER M. GOLDEN,

*

Plaintiff,

×

vs.

CIVIL ACTION NO.: CV-06-106

DEER VALLEY HOMEBUILDERS, INC., A Corporation; TIMBERLINE HOMES, INC., A Corporation; And JOHN MARK PARKER, An

Individual,

*

Defendants.

*

DEFENDANT JOHN MARK PARKER'S RESPONSE TO PLAINTIFF'S SECOND REQUESTS FOR ADMISSIONS

16. Admitted.

JEFFREY G. HUNTER (HUN028)

ALEX/L. HOLTSFORD, JR. (HOLO48)

Attorney For Defendant

OF COUNSEL:

NIX HOLTSFORD GILLILAND HIGGINS & HITSON, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed, postage prepaid, an exact copy of the foregoing document to:

G. Houston Howard, II Attorney For Plaintiff HOWARD, DUNN, HOWARD & HOWARD Post Office Box 1148 Wetumpka, Alabama 36092

Joel A. Williams SADLER SULLIVAN, P.C. Suite 2500 420 N. 20th Street Birmingham, Alabama 35203-5203

Warren Butler Lyons, Pipes & Cook Post Office Box 2727 Mobile, Alabama 36652-2727

This the 44 day of December, 2006.

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